169. A. 61 (3)

THE

AFFAIRS OF ASIA

CONSIDERED IN THEIR EFFECTS

ON THE

LIBERTIES OF BRITAIN,

In a Series of Letters,

ADDRESSED TO

THE MARQUIS WELLESLEY,

LATE GOVERNOR-GENERAL OF INDIA;

Including

A Correspondence with the Government of Bengal, under that Gentleman, and a Narrative of Transactions, involving the Annihilation of the personal Freedom of the Subject, and the Extinction of the Liberty of the Press in India:

WITH THE

MARQUIS's EDICT for the Regulation of the PRESS.

BY CHARLES MACLEAN, M. D.

Author of a View of the Science of Life; and an Excursion in France, from the Cessation of Hostilities in 1801, to December 1803, &c.

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SECOND EDITION.

London:

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TO THE

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THE rapidity with which the first edition of this work has been exhausted, is no mean proof that the people of this country are at all times ready to make common cause against the violators of their rights and liberties; and leaves me to regret that it is not less unworthy of the public favour. I have especially to lament that, from the necessity of a seasonable exposition of some parts of the conduct of the last Governor-General of India, it has not been in my power to give more than a faint outline of the danger arising to the liberties of the parent state from the general system of Anglo-Asiatic government. Enough, however, has, I trust, been said to convince the public of the existence of that danger, and of the extreme importance of instituting an immediate inquiry, on the most extensive scale, into the debasing effects of this unique *political* lusus naturæ.

1st September, 1806.

THE

AFFAIRS OF ASIA

CONSIDERED IN THEIR EFFECTS, &c.

LETTER I.

Addressed to the Marquis WELLESLEY, *late Governor General of India.*

"Whoever will attentively consider the English history, may observe that the flagrant abuse of any power, by the crown or its ministers, has always been productive of a struggle, which either discovers the exercise of that power to be contrary to law, or (if legal) restrains it for the future."

Blackstone's Commentaries, vol. iii. p. 135.

MY LORD,

I REJOICE that your arrival in England affords me the opportunity of renewing the subject of our correspondence in India, upon terms of somewhat less inequality. Aware as I am of the weight which, even in this free country, family connections, wealth, and parliamentary influence, throw into the scales of a contest, I feel that it would be paying a bad compliment to the spirit and understanding of the people, when their rights and liberties are invaded, to doubt that they will make common cause in their defence. It is, I believe, an established maxim

of free governments that acts of injustice, tyranny, or oppression, perpetrated against any member of the community, although as facts they may only affect him individually, as precedents equally affect them all. What is my case to-day may be any other man's case to-morrow. The injuries of the individual are therefore the cause of the community; and, as it is his duty to resist, it is their province to punish, every undue exercise of authority.

How far this principle applies to the proceedings which I shall here detail, the public will decide. Holding it to be the first duty of every subject of a free state, if he wishes that the state should continue free, to resist all encroachments, whether in his own person, or on a more general scale, upon the rights and liberties of his country, I glory in having opposed a regular and constitutional resistance to pretensions, I will not say simply unconstitutional, but wholly incompatible with the existence of any degree of freedom. During your administration of India, I made an insinuation, in one of the public newspapers, of improper conduct against a magistrate. You required me to make an apology for that insinuation. I refused to make such apology. You sent me a prisoner to England. This is the sum total of the affair between us. The details and illustrations will be found in the following correspondence.

Let us now see what the magistrate had done, against whom *I insinuated* improper conduct. He only committed to prison, with various circumstances of indignity, a friend of mine, on accusation *by a friend of his* *, of a simple assault, refused to admit him to bail for that offence, and sent him under an escort of soldiers, in an open boat, at the imminent risk of his life, and to the actual injury of his health, in order to be conveyed to Calcutta, an immense distance from the scene of action (I presume if he had any specific purpose in view) for trial. "In this boat," says my friend, (See Letter No. IV.) "was I confined "for upwards of a month, exposed to wind and "weather, sitting all night in the rain, and ready "to jump overboard, expecting the boat to be "dashed to pieces by the severe north westers, "prevalent at that time of the year." He adds: "I got a deafness, which I am as yet hardly clear "of."

Was it not in consequence of my insinuation, and of some other hints conveyed to your Lordship's ears, through the medium of the Calcutta newspapers, that orders were sent by government to release Mr. Maclean, while yet on his passage, and to permit him to return home, without however putting him in possession of his Indigo-

* Mr. A. Maclean and Mr. B. D'Aguilar, the persons in question, were partners in an indigo work, of which the former had the management and was in possession.

works, from which it had been the object of a conspiracy to eject him? Did not the same hints also, with the letter of *Habeas Corpus* (of which I regret that I have not a copy) produce a reprimand to the magistrate, and frustrate the ulterior proceedings projected by a junto against Mr. Maclean? A perusal of his Letters No. III. and IV. will plainly shew that the whole was a preconcerted plan; that the assault was purposely provoked, with a view to the ulterior proceedings of ejecting him from the Indigo-works, imprisoning and removing him. But this was not all: a criminal indictment at the suit of the crown, was laid against Maclean in the supreme court of judicature, for this terrible assault, by which manœuvre D'Aguilar might be cited as a witness in his own cause, and being, in that quality, placed under the protection of the court, would be exempted from the operation of a debt contracted in Calcutta solely on his account, while Maclean was to have been arrested for the very same debt, with which he had no other concern than having, when they were upon friendly terms, unadvisedly (and perhaps with this very object in view on the part of *his friend*) become security for D'Aguilar *. The bill of indictment for the assault was

* Historically it may be worthy of remark that Europeans, residing beyond the provinces of Bengal, Bahar, and Orissa, are not considered under the jurisdiction of the supreme court of judicature, and consequently cannot be forced *by them* to pay their debts. But the Governor-General *may* order them, within the

found by the grand jury, but the prosecution had not commenced when I left India. I have however reason to believe that the various notices given to the public, through the newspapers, quashed the proceedings, and in part frustrated these projects of complicated iniquity *. Even the expiring efforts of the liberty of the press in India were then productive of some good.

The greatest statesmen and legislators from Cicero to Burke, agree that justice is the only solid support of a state: *nec domus nec respublica stare potest, si in ea nec recte factis præmia extent ulla, nec supplicia peccatis.* Cic. Even those of us, who are most alive to these truths, are too ready to pass over solitary instances of injustice as unworthy of notice. We are too apt to believe that they will not recur. It is by such criminal neglect that the liberties and happiness of nations are endangered and lost, while by duly attending to these minutiæ, obscure states have risen into greatness: *Parva sunt, sed parva ista non contemnendo majores nostri maximam hanc rem fecerunt.* Livy. The arbi-

so that, in some cases, it depends upon *his will*, whether British subjects shall pay their debts!—The district of Benares is beyond these provinces,

* It seems not undeserving of notice, that the legal adviser of the Benares junto, in the case of Mr. Maclean, and of the Governor General, in my case, was one and the same person, the now puisne judge, Sir W. Burroughs, whose absence from this country prevents my making any farther observations on his conduct, than that I have no doubt he merited the additional 1500l. a year added by the Marquis Wellesley to his salary.

trary imprisonment and transportation of an individual will be considered of little importance by those " whose understandings measure the viola- " tion of the law by the magnitude of the instance, " not by the important consequences which flow " directly from the principle." It is not to such men that I address myself, nor to those " who " affecting a character of moderation, in reality " consult nothing but their own immediate ease," nor to such as " are weak enough to acquiesce " under a flagrant violation of the laws, when it " does not directly touch themselves." To persons of this description, I have only to say that I lament a punishment more severe than contempt has not been provided for such despicable supineness.

But I am unwilling to believe that there is yet a man in the kingdom so criminally indifferent as not to be roused, if not from sentiment, at least from a consideration of remote interest, by the series of profligate measures which I shall here present to his view. They are not simply a gradation of private injury, or public wrong, or even an imperfect mixture of both; but an absolute and complete violation, in epitome, of all that is most precious, in the principles of the British Constitution, and that in as complete and perfect a form as it is possible for the human imagination, in civilized times like these, to conceive practicable, in any portion of the British Empire. If

the establishment of a despotism over fifty millions of people, such as these measures infer, and which I shall prove to the satisfaction of every unprejudiced man in the kingdom, be not sufficient to strike a general alarm throughout the land, and to cause the most vigorous measures of enquiry, the national apathy must have already reached a point from which there is no return. Let us here take a curfory view of the stages or degrees by which you completed the climax of despotism. The conduct of the Magistrate of Ghauzeepore in abetting a conspiracy against Mr. Maclean, and yours, my Lord, in abetting the conduct of the Magistrate of Ghauzeepore, cannot be better characterised than in the following words of Blackstone. " There is yet another " offence against public justice, which is a crime " of deep malignity ; and so much the deeper, as " there are many opportunities of putting it in " practice, and the power and wealth of the of- " fenders may often deter the injured from a le- " gal prosecution. This is the *oppression* and " tyrannical partiality of Judges, Justices, and " other *Magistrates*, in the administration and " under the colour of their office. Howéver, " when prosecuted, either by impeachment in " Parliament, or by information in the court of " King's Bench (according to the rank of the " offenders), it is sure to be severely punished " with forfeiture of their offices (either conse-

" quential or immediate), fines, imprisonment,
" or other discretionary censure, regulated by
" the nature and aggravations of the offence com-
" mitted."

But, if such crimes, according to that excellent lawyer, deserve impeachment, what must we think when we find that these were but the mere incipient stages of your progress? That you proceeded in your course with a rapidity worthy of a better cause, and never drew breath until you annihilated the personal freedom of the subject, and extinguished the liberty of the press in India? These offences, whatever they may amount to, I pledge myself to prove by facts the most clear and incontrovertible. It will depend upon others to apply the law and the punishment.—Had not the measures of your administration, my Lord, been stamped with a character of consistency throughout, I should have much doubted whether you were fully aware of even the most immediate consequences of the arbitrary proceedings, which are to be the subject of the following letters. To suppose that you could have perceived them all would I trust be paying too high a complement to your discernment at the expence of your integrity. Did you perceive that, in the single fact of imprisoning and sending an individual to Europe, for refusing to make an apology for having insinuated improper conduct

a general principle, that the liberty, property, reputation, and in some degree the life, of every British subject in India, were equally at your disposal? That you had the right of transportation over every individual, who did not pay implicit obedience to your will—a doctrine which you afterwards, indeed, in promulgating your regulations for the press, did not scruple formally to avow *?

After having asserted this right of transportation for every act of disobedience to your will, and by laying previous restraints upon publications, prevented the possibility of committing offences by the press, it would require some ingenuity to divine means by which you could have taken the law more completely into your own hands, or established a more perfect system of despotism. Although the facts would have been more striking, the principle could not be better illustrated, if you had abolished the courts of justice as useless, and shipped all the judges for Europe.

With respect to the extinction of the liberty of the press, it was the natural consequence, as in-

* The Marquis's regulations for the press have been moved for in parliament. But as the circumstances attending my transportation are essentially connected with, and comprehend a historical detail of, the extinction of the liberty of the press in India, it seems absolutely necessary to the right understanding of the subject that I should consider them together.

deed it was the principal object, of your assumption of the power of transportation in my case. You were probably aware, that while I remained in India, as the proprietor of a newspaper and a magazine, you could never accomplish your grand object of subjecting the press to an *imprimatur*. But finding that you could not with decency avow so profligate a motive, you availed yourself of the ridiculous pretexts of my refusing to make an apology for having insinuated improper conduct against a magistrate, and of my residing in India without a licence, to effect your purpose. This much I think it necessary here to anticipate. The merits of each of these points shall be afterwards separately considered.

You best know, my Lord, whether, during your administration of India, you committed many similar acts of prowess, or were satisfied with the manifestation of your strength in this single instance. This indeed, as the accumulation of instances would not affect the principle, is a matter not of great importance to the public to ascertain. From what has passed in my case alone, we are fully entitled to conclude that, if your Lordship was sometimes graciously pleased to be merciful, you must still have considered yourself as having an undoubted right to exercise the same arbitrary authority over every British subject in India, which you exercised over me. The singularity of the case, if it be singular, would but ag-

gravate the oppression of the individual, without mitigating the offence against the state. But the Court of Directors, or their secret committee, will perhaps have the goodness to inform us, and the public have a right to expect the information, whether transactions, or correspondence, relating to the imprisonment or expulsion of individuals from India, without the form of a trial, have ever been considered as matters of sufficient importance to be communicated to them, by their governors, or to obtain a place upon their records.

Having stated your general object, let me now advert to your Lordship's motives, in the assumption of these very extraordinary powers. They may, for ought I know, have been unexceptionable. With a man of your exalted notions, they could not of course have been founded in personal ambition. You had possibly some grand schemes of happiness for the inhabitants of India, which could only be carried into effect by first depriving them of all free-will. These projects you have perhaps deigned to communicate to the *Secret Committee* of the Court of Directors, and they, with or without the compulsion of the Board of Controul, have perhaps thought proper to approve of your conduct *. Of the sys-

* The Marquis's brother has actually moved that papers be laid before parliament to shew the *approbation* of the Court of Directors of his regulations for the press! It would have been more to the purpose to have shewn that they were necessary or useful.

tem of compulsion under which the Secret Committee of the Court of Directors acts, and the effects it is likely to produce, or has already produced, on the liberties of this country, I shall afterwards have occasion to speak. The motives of the Court of Directors and Board of Controul may have also been quite unexceptionable. But in the conduct of public men we have nothing to do, but with facts. They owe an account of their motives to another tribunal.

Do you, then, really think, my Lord, that with such explanations you will be able to satisfy the people of England? Do you imagine that they are already converted into Asiatics? Your knowlege of the world might have taught you, that men will suffer an invasion of their dearest rights, when they will not bear an insult to their understandings. If a person had spontaneously committed a theft or a robbery, but, finding afterwards that some enquiries were likely to be made by the owners of the property he had taken, he were to tell them, in his vindication, that he had informed his master of what he had done, and that his master highly approved of his conduct, would they not treat him as an impostor, as well as a fool, and a knave?

Pray have the goodness to explain to us, my Lord, wherein this would differ from your case, if you have actually annihilated the personal freedom of the subject and extinguished the liberty

of the press in India, and if you should now attempt to vindicate yourself by alleging the *approbation, not even the order* of your masters? If however you could produce their order twenty times repeated, you must, before it can serve you in any stead, first shew what right your masters have to give that which does not belong to them: you must shew that the fee-simple of the persons and property of fifty millions of his majesty's subjects is vested in the Board of Controul and Court of Directors. Unless you can do this, the orders of these bodies will be no exculpation of your conduct.

But we can comprehend the policy of procuring the approbation of your masters to measures which cannot stand upon their own merits. Although it cannot excuse you, it may lessen, by dividing, the odium; and, by increasing the number of accomplices, augment the chances of impunity. At all events, my Lord, your conduct and your language have been perfectly intelligible, and we owe you obligations for coming so fairly to an issue. The grand experiment must now be made whether the British Constitution is for ever to fall, or that complex Asiatic machinery, which has been so long silently operating its destruction, to be overthrown.

This is precisely a case calculated to remove uncertainties on several points of the highest importance to the public. The manner of its

reception will enable us at once to ascertain whether the inroads that have been made, particularly for the last few years, on the freedom of public discussion, have paralysed beyond redemption the wonted energies of the British mind; whether, in respect to every grand or liberal sentiment, we are in a state of advancement or retrogradation, and whether we are in the actual enjoyment of civil and political liberty, or the vaunted blessings of our Constitution be mere mockery and delusion. There cannot, I think, be a fitter season for enquiring how far our internal freedom is solid and efficient, than when we proclaim ourselves the defenders, and are so in effect, of the independence of Europe. It would be a curious and an useful enquiry, but into which I do not mean at present to enter, how far the apparent decline of our freedom may be connected with circumstances, and how far with men. If it should appear that we have actually suffered permanent political debasement, the principal cause of the evil, if I be not widely mistaken, will be found in the nature of our connection with Asia. This cause indeed is, in my opinion, so palpable that, unless we shut our eyes, we cannot avoid perceiving it. I here assert, and I shall prove it before I have done with you, my Lord, that the silent progress of Asiatic influence, particularly under such a guide as you, is alone sufficient, by weakening the sentiments of freedom

the morals of the people, to deprive our constitution and liberties of the sole principles by which they exist. It is like the vile creeper, which twines round the majestic oak, insinuates itself into its vital parts, arrests the current of its circulation, impedes the progress of nutrition, and continues its odious caresses until the venerable tree is converted into a lifeless trunk.

With respect to the offences imputed to you against the East India Company, having been little more than a month a subject of your government, I know nothing of your innocence or guilt. It is quite sufficient for me to prove, from transactions within my own knowledge, that, in this short period of time, you annihilated the personal freedom of the subject, and extinguished the liberty of the press, in India.

But it may be proper in this place to state generally not only what, under the system *you* have established in India, and that which has been established by others in Europe, even a single Governor-General may effect, in the way of peculation, extortion, and tyranny, abroad, but also what he may do by a re-action towards destroying the liberties and the Constitution of the mother country. He may, if he has a Board of Controul in understanding with him, assume the patronage of whole provinces, and apply millions annually, with scarcely any risk of detection, (for the liberty of the press is no more) to his own use and their

gratification. He may continually employ the petty princes of the country as mere spunges, through which to suck up the last *pice* of the miserable natives, throughout the afflicted provinces. The enormous sums, which, without descending into petty but fertile details, might be thus obtained by a rapacious Governor-General, would supply him with ample means of corrupting a great portion, not only of the representative, but of the literary, integrity of the nation, that his delinquencies might be not simply covered and defended, but even remunerated and applauded, upon his return home. Here, then, we should have an individual above the laws, intangible, behind impenetrable ramparts of corrupt influence, with the Constitution of the country prostrate at his feet, and exulting over its ruins !

Oh ! but this can never happen. The Court of Directors have the power of recal; they have the power of doing wonders! Let us now see in what situation these unhappy gentlemen really stand. If it should please the Board of Controul, or the Government, which is precisely the same thing, to order otherwise, will the Court of Directors dare to recal the most obnoxious Governor? No ! They may even be compelled to thank him for a conduct of which they totally disapprove: and after he arrives at home, although their affairs may have been ruined by his extravagance and tyranny, and every one of his

measures should be altered by his successor, (I am speaking generally) the Court of Directors may be placed in a situation that they dare not prosecute him, nor even avow their reasons for not prosecuting. Well and truly has Mr. Francis called them "Unhappy, unfortunate, and poor "gentlemen," who may be made the mere tools of the Board of Controul and Governor General, laughed at by them, and blamed by the public for not daring to seek redress, or not daring to avow their reasons for not seeking redress. We are supposing the Board of Controul to be covering the measures of the Governor General and perhaps their own. But how, it may be asked, can they prevent the Court of Directors, in such a case, from doing justice to their interests and their character? By a very easy process. They have only to say, "You owe the State six millions sterling, which we can either demand or "not as we think proper. If you obey *our will* "we shall give you longer credit; but if you are "refractory, we shall oblige you to fulfil your "engagements *to the public*, and if you cannot pay "the money you must forfeit your charter." This reasoning is conclusive. Each Director has a salary and some little patronage to lose.

But what must be the effect upon Great Britain of this system of checks, this circular government, which has neither beginning nor end, which

puts the revenues of a population of fifty millions of people at the disposal of a Board and a Governor General? It is alarming to contemplate. A wicked Board of Controul might tell a wicked Governor General: "Extort millions from the "native powers, or British subjects, it does not "matter which; be sure you remit us a good "portion, and you may enrich yourself as much "as you please. In order, however, that you "may do this with safety, take such vigorous "measures that no one will dare to speak or to "write upon public affairs in India. We shall "take care of the Court of Directors. They "must approve of every thing you do, otherwise "they shall forfeit their charter; and as to the "public, we can easily satisfy them." We shall suppose this wicked Governor (ambition is the gentle term usually given to this species of wickedness) sets out invested with those full powers; that the very first thing he does, upon his arrival in India, is to extinguish the liberty of the press, and to annihilate the personal freedom of the subject; that he afterwards, by war, negociation, spoliation, extortion, patronage, and immerging the Company in debt, raises unheard of funds, for the purpose of enriching himself, and making adherents to support his cause in England; that he even employs vast sums in corrupting the periodical publications of Great Britain, from the an-

nual records of history to the daily journals *. This is a case, my Lord, which of course I am only supposing. Under the present Administration, and the present noble President of the Board of Controul (Lord Minto), I am very certain such a case cannot happen. But others less scrupulous may succeed them; and we are to guard against what men *may* do, not against what they *will* do.

The East India Company, the Court of Directors, and the public, have now surely had sufficient experience of Mr. Pitt's India Bill to convince them of its real tendency, if any thing short of absolute slavery can convince them. Has ever such a monstrous instrument of government been known in the world, as that with which the patronage of a subordinate country, possessing fifty millions of inhabitants, supplies the Administration of a mother country possessing only fifteen millions? Is there a family of any consequence in England, Scotland, or Ireland, that has not some friend or relation to be provided for in India? How many individuals, how many families, how many counties even, will the expectation of preferment keep at the devotion of the Board of Controul, and therefore of the government? Is it extravagant to suppose that a patronage so immense

* It may be matter of curious speculation to observe how far such influence may hereafter operate either by silence or by an active support of Eastern delinquency.

is alone capable of sustaining an Administration in office, not only contrary to the voice of the people, but even to the power of the Crown? In the hands of a wicked Administration, so enormous an engine of government, by absorbing the power of every branch of the Constitution, is alone adequate to destroy the freedom of the state. But even at the disposal of the most virtuous administration that can be supposed to exist, it would, by a gradual but infallible operation, produce an abject and servile disposition in the people, and rooted habits of tyranny in their rulers. It is therefore a political monster against which every man in the universe, who does not wish for a return of slavery and barbarism over the face of the earth, should raise his voice. The plan of Mr. Fox, (I mean no invidious comparison between the two greatest Statesmen of modern times) which was rejected under the influence of a strange delusion, was, comparatively speaking, sublime. Why not again have recourse to that simple and wise plan, the admirable principles of which were supported by Mr. Burke, Sir Gilbert Elliot (now Lord Minto), and many other distinguished characters in both Houses of Parliament, with the force of British eloquence and the prescience of British wisdom? From this or some such change, the Company and

the public would derive incalculable benefit, and vice and corruption would alone süffer.

Under the actual circumstances of India, men going in official capacities to that country are but temporary tenants of the soil, who wish to make the present crops as productive as possible, having no interest in the permanent improvement of the estate. But the narrow limits that have been put to colonization in India have other pernicious effects to this country. Those who make large fortunes generally return to England, and it is their great ambition to become members of parliament. Now, without thinking worse of those gentlemen than of any other set of men placed in similar situations, I cannot believe that, after having been inured to Asiatic despotism, for ten, fifteen, or twenty years, they are the most fit persons to compose the senate of a free nation, particularly if they have been under the tuition of such governors as your Lordship.

It is for the consideration of the public whether it be wise, in preventing the colonization of Asia, and endeavouring by that means to perpetuate the East India Company's monopoly, to ensure the certainty of converting Britons into Asiatics. These are considerations that cannot be too strongly impressed upon their minds. It cannot have escaped their recollection how much the gradual operation of the wealth, luxury, and cor-

ruption, introduced by the proconsuls of the different provinces, on their return to Rome, contributed to vitiate, and finally to overthrow, the once venerable fabric of Roman greatness. The example should operate as a salutary warning.

The liberties and independence of England, I maintain, have nothing to fear from the power of France, but every thing from the influence of Asia. The freedom which is smothered for a moment by a foreign invasion, may burst forth in all its pristine vigor; but that, which is extinguished by a gradual debasement of the soil, will not resuscitate for ages. To what purpose shall we have expended such enormous treasures, and sent forth such mighty armaments, to prevent the risk of foreign subjugation, if we are to suffer our liberties to be gradually undermined at home? If we are to be slaves, is it of any consequence who are to be our masters? But domestic tyranny, if it were not in itself odious, would in the end infallibly prepare us for a foreign yoke.

The necessity of watching the silent and almost imperceptible progress of despotism is thus eloquently expressed, by a constitutional writer, to whom the people of this country owe many obligations: "If an honest, and I may truly affirm, a "laborious zeal for the public service," says Junius, "has given me any weight in your esteem, "let me exhort and conjure you, never to suffer

" an invasion of your political constitution, *how-*
"*ever minute the instance may appear*, to pass by,
" without a determined, persevering resistance.
" One precedent creates another. They soon ac-
" cumulate and constitute law. What yesterday
" was fact, to day is doctrine. Examples are sup-
" posed to justify the most dangerous measures,
" and when they do not suit exactly, the defect is
" supplied by analogy. Be assured that the laws
" which protect us in our civil rights, grow out of
" the Constitution, and they must fall or flourish
" with it. This is not the cause of faction, or of
" party, or of any individual, but the common in-
" terest of every man in Britain."

With respect to the great Eastern portion of the British empire, I shall here prove that our political constitution has been not only violated in minute instances, but that it has been wholly destroyed. Let us then apply the appropriate remedy to this growing evil. Let us, before it be too late, alter the whole system of Asiatic government, so as give it a simple, intelligible and useful organization, and to establish a precise and determinate responsibility. Let us not out of misplaced tenderness for any set of men, wait till, by the force of influence and example, every remaining sentiment of liberty be destroyed in Britain. Let us follow the light of history, which shows that the best legislative provisions have risen out of particular cases, rather than the prescience of man,

It is on these grounds chiefly that I hold it my duty to lay your proceedings before the public, conceiving it of great importance to them to ascertain whether the power of imprisonment, and transportation, which you have claimed the right to exercise over British subjects, as Governor of an Asiatic province, be contrary to law, or, if legal, it should be restrained for the future; and whence you derive your right to violate the British constitution, by imposing previous restraints upon publications? But I have also other objects in reviving the discussion between us. I own I am desirous that those who know the general fact of my expulsion from India, should be made acquainted with the particular circumstances attending that extraordinary measure; and it may be presumed that details, illustrative of the principles upon which mighty empires are governed, are not wholly devoid of interest as matters of historical record.

Let others accuse you of disobedience to the Court of Directors, extortion, misapplication of public money, oppression of native princes, unjust partiality to your relations, and making war contrary to law, for purposes of aggrandisement. These are indeed grievous offences. But in their consequences to the people of England, they dwindle, in my opinion, into nothing, when compared to the enormity of those which the follow-

ing facts infer. If the twenty millions added to the Company's debt, during your administration, had been all appropriated to your own use, or divided among your partisans; if you had oppressed, banished, or beheaded all the native princes of India, for the purpose of extortion and of aggrandizing the Company's territory; although, morally speaking, these would be great crimes, the legal measure of punishment might be difficult to determine. But when justice and freedom, the natural props of every state, are taken away from an empire, so aggrandized, it stands a colossus with feet of clay, ready to fall upon the parent state, and crush her in its ruins. The consequences are incalculable, and the nature of the crime well understood. I wish, my Lord, this was only declamation. But unfortunately the case is too well made out. You have destroyed liberty, and violated justice in our great Eastern empire. The fact, the precedent, and their whole enormous chain of consequences, are already operating with secret but accumulating force against the liberties and the constitution of this country, and rapidly undermining their foundation. The reflux of Asiatic despotism, if we do not oppose an immediate resistance to the torrent, will overwhelm us in irretrievable ruin.

When it becomes necessary to accuse of high crimes and misdemeanours a man who has held high offices in the state, I feel the ungraciousness

of the task, and undertake it with reluctance. But a paramount duty imposes it, and I shall perform it to the best of my ability. On such occasions, it is usually one of the first questions asked by the public, What are the motives of the accuser? And although motives cannot affect the truth of facts, and are seldom easily ascertained, yet this curiosity, as originating in a wish to prevent the operation of prejudices against persons under the imputation of crimes, is in itself laudable, and ought therefore to be gratified. It seems also due to myself that I should on this point enter into some explanation.

Men of slavish minds, consulting their own breasts as the only standard of human sentiment, are incapable of conceiving that such a thing as public spirit can exist. According to them, every charge of state delinquency must originate in motives of interest, prejudice, or passion, taking these words in their ordinary, not in their strict philosophical acceptation. But such monstrous doctrines are unfit for a community of free men. A people by whom sentiments so degrading can be entertained, are already more than half enslaved: they are at least, *homines ad servitutem paratos.*

Your partisans, my Lord, will no doubt be cautious how they insult the understandings of the people of England, by setting up this mode of defence. Allow me by the way to observe

(for really I am not, excepting upon public grounds, your enemy), that, from what we have already seen of their conduct, the indiscretion of your adherents is likely to produce the worst effects of enmity. The attempt to throw obstacles in the way of an inquiry into your administration, without the possibility of succeeding, can have no other tendency than to increase the suspicion of delinquency in the public mind; and you will come to your trial under an undue weight of prejudice superadded to any proofs of real guilt.

That there is in effect a wide difference between wellwishers and friends, is a truth of which if you are still ignorant, you will probably soon have abundant experience. The senatorial exertions of your relations, and of the gentlemen of the law, although doubtless well intended, are by no means calculated to turn the popular prejudice in your favour. The public, however they may excuse the partiality of the former, will not easily give credit for disinterestedness to the volunteer defences of the latter. In proportion as they regard the professional exertions of these gentlemen as respectable in their proper courts, they will consider their extra-official advocation as liable to suspicion and doubt. If in your own purity, my Lord, we had even a guarantee for theirs, we have still a very high authority (that of Mr. Burke) for believing that the lawyers are.

on another principle, naturally hostile to parliamentary inquiry and impeachment.

But parliamentary inquiry, and impeachment, I conceive to be the only proper mode of proceeding on the offences with which you are charged. It will be for your Lordship to determine whether, if the lawyers persist in defending you by anticipation in parliament, they will not ruin your cause with the people, whose opinions, I trust, are not yet to be slighted with impunity. If I were personally your enemy, my Lord, nothing could give me greater satisfaction than to observe the modes of defence which have been resorted to by your adherents of various descriptions. But, far from wishing you a punishment one degree beyond what I, in my conscience, believe your offences against the constitution of this country constitutionally require, I should be even sorry to see the public indignation aroused, by the indiscretion of your partisans, beyond the strict limits of justice, and the current of popular opinion rush against you with too unrelenting a fury.

Indeed, my Lord, if you will condescend to look back to the period of our correspondence, you will be sensible that, had you profited of the lesson of moderation, which I gave you, only one month after your arrival in India, by my constitutional resistance to your will, you need not be in that situation of peril, in which, if all senti-

England, you must shortly stand. You will then perhaps have cause to lament that, instead of treating me as an enemy (and an enemy too who had no chance of being able to inflict retaliation), you did not perceive that I was in effect your best friend. I had not, in fact, an opportunity of imbibing the smallest particle of enmity, or even prejudice against you; for until you appeared as Governor-General of India, I was as ignorant of your existence as you was probably of mine. The incipient measures of your government, although enveloped in mystery, had not excited more than doubt; and your attack upon myself was I believe the first strong act of your administration. During our official intercourse, I still remained, in respect to your person, as ignorant as an honourable and learned gentleman * lately took occasion to declare himself in the House of Commons; and I have not since had an opportunity of taking exception at a single feature or lineament of your countenance. Under these circumstance, it will not I trust be deemed too presumptuous that I should claim credit with the public for being, in respect to your Lordship, precisely in that unbiassed state of mind so eloquently depicted, in his maiden speech, by the honorable and learned gentleman alluded to, with perhaps this difference, that I have experienced how very possible it is to feel the force of your influ-

ence, without having any knowledge of your person.

If I should be accused by your partisans of acting from motives of resentment, founded on a deep sense of injury, I do not know that it would be very necessary for me to repel the charge. Mr. Seldon, when he was arbitrarily imprisoned by an order of King Charles I. retained his resentment twenty-four years after his liberation. But there is a wide difference between entertaining a legitimate resentment and gratifying an useless revenge. There is besides, if you are yet to learn it, in the minds of free men, a resentment for public wrongs—a resentment for liberty violated, which they cannot and ought not to relinquish. If, after the lapse of centuries, we still remember with indignation the conduct of men much less tyrannical, and much more excuseable, than your Lordship, surely we may be permitted, merely as members of the community, to retain some gentle sparks of indignation against public measures, which we have seen and felt after a lapse of only eight years, and which we are likely to feel in their remotest consequences.

If there was no possibility of your Lordship ever having an opportunity of acting upon your own confessed principles of government in public life; if there was no possibility of my coming, as a subject of this country, again in collision with those principles; if there was no possibility that

future governors should act upon the precedents you have established, or that the despotism of Asia should in the end swallow up the liberties of Britain; I should most willingly consign the whole affair to an everlasting oblivion, for indeed my time might be much more profitably as well as more agreeably employed than in the discussion. To undertake the labor and expence of laying this detail before the public, if there were no other motives than the gratification of an useless revenge, would, after such an interval for deliberation, be a strain of folly which even you, my Lord, will scarcely impute to me, knowing as you must do, that, after the experience I have had, nothing but a firm conviction of right could induce me cooly to re-enter the lists against so formidable an antagonist.

Those who know me intimately will not, I believe, doubt my sincerity, when I declare that, far from considering the political duties of the individual as limited to himself and his acquaintances, I should not have remained an indifferent spectator to the violation of any principle of the British Constitution, in the person of a man whom I had never seen. I well know the disadvantages of indulging such sentiments in these times. But if men did not frequently act upon them, even at the expenee of their interests, and prospects in life, the country would be in a most deplorable situation indeed. For my part, so strongly am

I. impressed with the advantages and necessity of animadverting freely on the conduct of public men, that I would not relinquish the right of discussing the extraordinary pretensions of your Lordship, were I sure of incurring the penalty of being re-banished from England to Bengal.

It is this thorough conviction of the obligations incurred by every individual in Great Britain, to maintain the laws and constitution of his country in general, in return for the protection which they afford him, and to support his own rights in particular as a part of the common stock, together with a due sense of the utility and glory of preserving, and of the injury and dishonor of losing, our liberties, which impel me to appear as your accuser; a duty which, however repulsive, I should feel for ever dissatisfied with myself if I neglected to perform.

To exclusive sentiments of patriotism, however, I make no pretensions; for notwithstanding all that has been done, for the last twenty years, principally by Asiatic influence, to destroy those sentiments in England, I am persuaded that whatever regard I entertain for freedom and for just laws is yet only in common with millions of my fellow-subjects: and nothing less than their acquiescence with those tyrannical and ruinous measures of which I shall convict your Lordship, can convince me to the contrary.

CORRESPONDENCE,

&c. &c.

On the 23d and 24th of April, 1798, a paragraph was inserted in two Calcutta newspapers, the *India Gazette* and the *Hircarrah*, announcing the death of Mr. Allan Maclean, said to have been killed in a duel at Benares. On the 27th of April, I received a letter from that gentleman, dated at Monghyr, the 20th of the same month, which circumstance, as the distance from Benares to Calcutta is eight or ten days journey, rendered the report of his death, published there on the 23d, an evident fiction. In order to prevent the alarm which this unfounded report would occasion to Mr. Maclean's relations, I wrote, immediately upon the receipt of his letter, a note to the editor of the following day's newspaper, requesting him to contradict it. That note gave rise to my subsequent correspondence with the Governor General in Council of British India, which terminated in my expulsion from that

that country; and, as having formed the sole ground of that extraordinary proceeding, will be considered a curious document.

No. II.

To the Editor of the Telegraph.

SIR,

I request you will contradict the account which, through some very gross misinformation, was inserted in the last *India Gazette* and *Hircarrah*, announcing the death of Mr. Allan Maclean, said to be shot in a duel at Benares. I this day received a letter from that gentleman, mentioning indeed some circumstances, which, if his antagonist had not possessed an uncommon degree of prudence, might have led to that catastrophe; but I am happy to add, that the only disagreeable effects of the rencontre have arisen from the interference of the magistrate of Gauzeepore, whose conduct, upon this occasion, I will take a due opportunity of appreciating.

I am, Sir,

Your obedient Servant,

CHARLES MACLEAN.

Calcutta, April 28, 1798.

The circumstances of misconduct on the part of the magistrate of Gauzeepore, above alluded

to, are thus detailed in the following extracts of letters from Mr. Maclean.

No. III.

Extract of a Letter, dated Monghyr, 20th April, 1798.*

"I am thus far on my way to Calcutta, under a guard of a havildar, naick, and twelve seapoys. My confinement and treatment, since the 25th ultimo, have been not only unprecedented, but most unwarrantable and ignominious; all for a private quarrel between Mr. D'Aguilar and me. The particulars are as follows."

[In order to render the detail perspicuous, it will be necessary to premise, that D'Aguilar and Maclean had, for several years, been joint proprietors of an indigo work; and that, in the management of it, subjects of disagreement had latterly arisen, which were, by mutual consent, referred to the decision of arbitrators.]

"On the 19th ultimo, during my absence (at Benares,) I was informed that Mr. D'Aguilar intended coming to take charge of the concern, and forcible possession of my house. This disagreeable information induced me to set off home

* At this place Mr. Maclean was released from confinement, by order of government, so much was the conduct of the magistrate of Gauzeepore virtually disapproved of, even by them-

with all expedition. I rode from Benares, about seventeen coss, in the night, and arrived only a few minutes before Mr. D'Aguilar, greatly fatigued and irritated, not only at his former persecuting treatment of me, but particularly his attempt to dispossess me of my house, which I was determined to resist at the hazard of my life. He also, a few days previously, added insult to injury, by writing me, 'he conceived me beneath his notice.' These were things which, had I tamely submitted to, I should justly deserve to be turned out of society and my character despised. Wishing, however, if possible, to avoid a personal quarrel, and to have our disputes settled as we had both agreed to, I sent Mr. Watt, a friend of Mr. D'Aguilar's, to endeavour to dissuade him from coming near me, as, if he did, I should most certainly be under the necessity of insulting him. Mr. Watt delivered my message, and Mr. D's own servants begged of him not to come near me, which he paid no attention to, but walked up to the verandaw, where I was standing. I demanded an explanation of his letter, &c. which not proving satisfactory, I insulted him. He attempted to strike me, and, in defending myself, I hit his nose, which bled. Upon this he called out to his servants to seize me, which they actually were doing until prevented by my people. After the scuffle was

over, I offered him instant gentlemanly satisfaction; but, instead of accepting my offer, he rode off to the magistrate and swore against me.

"The magistrate, though not a justice of the peace, without ceremony, or hearing any thing I had to say in my vindication, committed me to prison; would not admit me to bail; would not indulge me a few hours to go home and look after my property, notwithstanding I offered him any security he might approve of; and would not take the deposition of my witnesses, on oath, which I publicly called upon him to do, representing to him the accidents, such as their decease, &c. which might deprive me of them in Calcutta, besides the great expence to me of being obliged to bring them with me. I ought also to have observed, that, instead of acting independently, in his public capacity, or consulting the Nizamut Adawlut, relative to the steps he should take, he wrote to the Benares appeal judges, who have no right to interfere, for instructions, and Mr. Treves (one of these judges) being a party concerned with D'Aguilar in the indigo works, of course gloried in any opportunity of accomplishing the object he long ago had in view, of turning me out of the works; and made out a letter, which he and Mr. Cherry jointly signed, peremptorily ordering the magistrate to send me in confinement to Calcutta, and

that he had no other alternative or option in the business. Mr. Neave, another of the appeal judges, was absent, and highly disapproved of their conduct.

"Major Macrae, Captains Macleod and Cameron, and the Reverend Dr. Mackinnon of the 76th regiment, publicly applied to the judge of Patna for my release, offering themselves securities for my appearance in Calcutta. But he declined interfering with the orders of the Gauzeepore magistrate."

No. IV.

In another letter of the 11th of June, 1798, after having been released by order of government, and having returned to Benares, Mr. Maclean writes: "I ought in the statement to have observed, that Mr. Rider, the magistrate of Gauzeepore, sent me down in a common pattella, or baggage boat, without a decent chupper*; and that, though she was already so lumbered that I could hardly move, he gave strict orders to the havildar of the guard to keep no less than four seapoys over me—enough for a criminal guilty of murder. In this boat was I confined for upwards of a month, exposed to wind and weather, sitting all night in the rain, and ready to jump

* Chupper is a covering, or roof, to ward off the sun and rain.

over board, expecting the boat to be dashed to pieces by the severe north westers, prevalent at that time of the year. You may easily conceive how disagreeable and mortifying such a situation must have been. Indeed, my health suffered greatly from vexation of mind as well as fatigue of body, and I got a deafness which I am as yet hardly clear of.

"On my return, Mr. Rider made no enquiry after me, nor offered to this moment to make any compensation or apology for the injuries and indignity I have sustained; screening himself on the ground of having acted, not from his own conviction of the propriety of the measure, but agreeably to the order of the appeal court.

"I hear that Dr. —— wrote you to suppress the intended representation to the public; this he did because he was living at Mr. Rider's, who wrote down to the board * to interfere, and to prevent your inserting it. The doctor is a particular friend of Mr. D'A—'s; it is not, therefore, likely that any thing you may write him can have effect. Should you have occasion to mention Mr. Dick's name, the register to Mr. Rider, I beg you will do so in the most friendly terms; for he paid me every attention in my confinement, and regretted much he could take no effectual steps in my behalf, on the occasion."

P. S. "Penalty bonds are sent up to be executed by all indigo planters in this district—for the first complaint in court 500 rupees, and for the second to be ordered to Calcutta. This is in consequence of Mr. D'Aguilar's mean conduct in complaining, and the noise it has made."

The applications made to government, in consequence of the part I took (letter No. II.) in the case now described, occasioned the following correspondence.

No. V.

To Mr. Charles Maclean.

SIR, JUD. DEPARTMENT.

A representation having been made to government respecting a letter which was published in the *Telegraph* of the 28th of April last, under your signature, I am directed by the Right Hon. the Governor General in Council to inform you, that his lordship considers the insinuation in your letter, with regard to the conduct of the magistrate of Gauzeepore, to be highly improper, and that he accordingly requires that you submit to government an immediate and satisfactory

apology for having published the letter in question.

I am, Sir,

Your obedient humble servant,

(Signed) H. St. G. TUCKER, Sub-sec.

Council Chamber, June 1, 1798.

To which I returned the following answer.

No. VI.

To Henry St. George Tucker, Esq. Sub-secretary.

SIR,

I have to acknowledge the receipt of your letter of the 1st instant, intimating the desire of the Right Hon. the Governor General in Council, that I should submit to government an immediate and satisfactory apology for the insinuation, with regard to the conduct of the magistrate of Gauzeepore, contained in my letter published in the *Telegraph* of the 28th April last, which the Right Honourable the Governor General in Council considers as highly improper.

In answer, be pleased to acquaint the Right Honourable the Governor General in Council that, as my insinuation can be proved to be well founded, I must beg leave to decline making the apology required.

Having reason to believe that the editor of

the *Telegraph* has been written to on the same subject, I beg leave to state, that I alone am responsible for the transaction, having solicited the insertion in the *Telegraph* of the letter in question, for no other reason than that it was the next paper for publication.

I am, Sir,

Your obedient humble servant,

(Signed) CHARLES MACLEAN.

Calcutta, 10th *June*, 1798.

Believing that the Governor General in Council could not, upon reflection, but perceive his error, I imagined the matter would of course drop here. Anxious, however, to act with all possible circumspection, in a case of so delicate a nature, in order to prevent every fresh occasion of reviving the dispute on my part, I wrote to the editor of the *Telegraph* as follows.

No. VII.

DEAR SIR,

I have had a letter from government, requiring an apology for having published a letter in the *Telegraph*, in April last, respecting the conduct of the magistrate of Gauzeepore, in the case of Mr. Maclean and Mr. D'Aguilar. I perceived that there was also a letter addressed to you upon the same subject.

I have returned an answer, declining to make any apology, and at the same time declaring, that I solely am responsible for the insertion of that letter in the *Telegraph*, having solicited you to give it a place for no other reason than that your paper was the next for publication.

As this is a delicate subject, may I beg to be favoured with a copy of the answer, which you may have already sent, or intend to send, to the Governor General in Council?—My reason for making this request is an anxiety that your answer, whilst it transfers the whole blame from yourself, as it properly may, should be couched in such terms as not to lay me under the necessity, unless called upon, of giving any farther explanation.

I am, &c.

To which I received the following answer.

No. VIII.

DEAR SIR,

I have sent in an apology for both letters*—but know not if it will be accepted.

* Viz. No. I. and an anonymous letter, also upon the same subject, inserted in the Telegraph, but which, as it was not written by me, nor with my knowledge or consent, does not appear to have any necessary connection with this correspondence, and is therefore here omitted.

I was desired to give the reason for publishing them—I answered thus—

"I beg to assure you, Sir, I had no reason for publishing these letters, but that of conceiving it to be within the line of my duty to the public. The first letter being signed by Mr. M'L. I could not well have refused to publish, as by his signature he took upon himself all responsibility. The other letter, I was assured, gave a correct account of a public transaction that had been misrepresented, and as such I published it."

Yours, &c.

H. M. KENLY.

That this apology, however, was not accepted by the Governor General in Council, will appear evident, from perusing that which was really published, viz.

No. IX.

Apology by the Editor of the Telegraph.

"The Editor, from error in judgment, having inserted a letter in the Telegraph of the 28th of April, under the signature of CHARLES MACLEAN, and also a subsequent letter on the same subject, in the Telegraph of the 12th May, signed HABEAS CORPUS, and the terms of both the said letters

appearing to him, on reconsideration, to be extremely improper, he is induced to apologize for having published them; particularly as the writers of the said letters have assumed a privilege of animadverting, through the medium of a public print, upon the proceedings of a Court of Justice, and of censuring the conduct of a public Officer, for acts done in his official capacity."

About a month after the receipt of my letter, declining to make an apology, the Right Honourable the Governor General in Council thought fit to communicate to me his resolution that I should return to Europe, in the following words:

No. X.

To Mr. Charles Maclean.

SIR, PUBLIC DEPARTMENT.

I am directed by the Right Hon. the Governor General in Council to inform you, that he has resolved, in pursuance of the powers vested in him by acts of parliament, to require you, as residing here without licence, to return to Europe by the extra ship Mildred, now under dispatch.

The Right Hon. the Governor General in Council further requires, that you give good and substantial security for complying with his requi-

sition, and he has issued orders to Captain Mougach to secure your person, and to detain you until you shall have given the security required.

I am, Sir,

Your most obedient humble servant,

(Signed) D. CAMPBELL, Sub-sec.

Council Chamber, July 9, 1798.

Having got private information of the intentions of government, before I received their official letter, I shut my door, and took such other precautions as I deemed necessary, to prevent their seizing my person, before I should have time to enter into an explanation with them upon the subject.

A few days having elapsed, before I could determine on the answer which I should give to the letter (No. X.) of the Governor General in Council, I received the following note from Captain Mouggach, whose followers were, during the interval, employed to watch my house.

No. XI.

To Mr. Charles Maclean.

SIR,

I have to request that you will inform me, by a line, whether you have answered the public letter from government, under date the

9th inst. and if you have taken the necessary measures to give the required security.

I am, Sir,

Your most obedient servant,

(Signed) J. MOUGGACH,

12th July, 1798. Captain, Town-Adjutant.

No. XII.

To Captain J. Mouggach, Town-Adjutant.

SIR,

In reply to your note of this morning, I beg leave to acquaint you, that I am now preparing an answer to the letter of government, dated the 9th inst. and expect it will be ready to-morrow forenoon.

It should have been forwarded sooner, but that the affair is of an importance which requires much deliberation.

I remain, Sir,

Your most obedient servant,

CHARLES MACLEAN.

Respecting the propriety of resisting a most enormous misapplication of a most unconstitutional law, there was, in my mind, no question. The *mode* of resistance formed the only subject of deliberation. That being determined upon, I sent, on the following day, my answer.

No. XIII.

To D. Campbell, Esq. Sub-secretary, &c.

SIR,

I have to acknowledge the receipt of your letter of the 9th instant, intimating the requisition of the Right Honourable the Governor General in Council, that I should return to Europe by the extra ship Mildred, now under dispatch; and, in the mean time, give good and substantial security for my compliance with his order.

It will not, I hope, be deemed disrespectful to government, that, whilst they are pleased to adopt measures which must deprive me of every means of subsistence, and destroy all my present prospects in life, I should request them to assign the grounds of so severe a proceeding; and thus afford me an opportunity of explaining whatever circumstances may have given them an unfavourable impression of my conduct.

But should they have determined, at all events, to enforce their resolution against me, without acquainting me with their motives, or, should the explanations, which, after knowing them, I could give, be deemed unsatisfactory, I beg leave, previous to a compliance with their orders, to state some circumstances peculiar to my situation, which I have no doubt the Right Honourable the Governor General in Council will find not unworthy of his consideration.

Some time ago two gentlemen became bail for me in a sum of money; and as I have no means of exonerating them, but such as my continuance in this country would afford, it becomes my duty to represent, to the Right Honourable the Governor General in Council, the injury which my being sent to Europe would occasion to individuals, certainly not implicated in any offence that I may be supposed to have committed.

I am besides a married man.—Trusting it is not the wish of the Right Honourable the Governor General in Council to part me from my wife, and being, by the [illegible] measure, deprived of all my resources, I hope it will not be deemed unreasonable in me to expect, that the Right Honourable the Governor General in Council should order a passage to be provided for her, with suitable accommodations.

With respect to the security required, having already given that of the two gentlemen above alluded to, for my personal attendance, on the 25th of October next, at the Supreme Court here, I submit, with deference, how far I can, with propriety, ask security that I shall return to Europe before that period.

I am, Sir,

Your obedient humble servant,

CHARLES MACLEAN.

Calcutta, 13th *July*, 1798.

The day after my answer (No. XIII.) was delivered to the Right Honourable the Governor General in Council, I received private information that orders had been issued to Captain Mouggach, to permit me to remain in my house, until the Mildred should be on the eve of sailing; then to force open my door, and to carry me on board of that ship. This notice, however, being non-official, and a state of suspense, in such a case, being both irksome and inconvenient, I determined, after some days were elapsed, to make an effort, either to get an answer to my letter of the 13th, or to procure other official information respecting the intentions of government. With that view I wrote the following note.

No. XIV.

To D. Campbell, Esq. Sub-secretary, &c,

SIR,

May I beg to be informed if you have had an opportunity of laying before the Right Honourable the Governor General in Council my letter of the 13th instant, and if he still persists in the intention of sending me to Europe by the Mildred.

I have the honour to be,

Sir,

Your most obedient servant,

CHARLES MACLEAN.

In answer I received a *salaam* (compliments) from the secretary.

From the 9th to the 20th of July I kept my door almost constantly shut, went on with my business, as well as the nature of such a situation would permit, and awaited patiently the result.

Early on the morning of the 20th I received the following note.

No. XV.

To Mr. Charles Maclean.

SIR,

I send you this to apprise you, that I have a full answer to your letter addressed to government, dated the 13th instant, and to acquaint you that I shall call myself with it in the course of this forenoon. In the mean time I have to observe, that there will be no occasion for your concealing yourself from me, as a security is only required for your fulfilling the contents of the letter which I shall deliver to you, and which security I am well assured you have in your power to give on the shortest notice.

This business being settled, it will free you from all restraint, or fear of being apprehended

in the streets, which might be the case should matters remain unexplained.

I am, Sir,

Your most obedient humble servant,

(Signed) J. MOUGGACH,

Captain, Town-Adjutant.

Fort William, Town-Adjutant's Office, 20th July, 1798.

My answer to the above.

No. XVI.

To Captain J. Mouggach, Town-Adjutant, &c.

SIR,

Before I received your note of this morning, I had resolved to write to you to-day, intimating that I should be ready, at three o'clock to-morrow afternoon, to deliver myself into your custody, or to take such other steps as the government may direct, in order to ensure a compliance with their first requisition.

But as I am ignorant of what may be the contents of the letter which you now have to deliver to me from government, and cannot, therefore, judge how far it may be proper in me to comply with their present wishes, I must be excused from consenting to a personal conference to-day, unless you previously assure me, upon

should be unable to assent to the propositions which you may have to make.

On my part, I beg leave to assure you that, far from intending to evade, I am preparing, with as much speed as possible, to comply with the orders of the Right Hon. the Governor General in Council, to return to Europe by the Mildred.

Should you, in the mean time, have any thing to communicate, by a note, I shall be happy to attend to it; and I have to express my regret, that it has been necessary for me to give you personally so much trouble.

I remain, Sir,

Your most obedient humble servant,

CHARLES MACLEAN.

Calcutta, 20th July, 1798.

About twelve o'clock of the same day, Captain Mouggach called at my house, and after promising, upon his honour, that he would not molest my person, was admitted. He gave me the following letter:—

No. XVII.

To Mr. Charles Maclean.

SIR, PUBLIC DEPARTMENT.

In reply to your letter of the 13th instant, I am directed by the Right Hon. the Governor

General in Council to acquaint you, that he has thought it proper to require you to return to Europe.

Firstly. For publishing in a newspaper a letter, containing an insinuation of improper conduct on the part of one of the public magistrates in the discharge of his duty, and when called upon to make an apology for that offence, refusing, in the most disrespectful terms, to make such apology.

Secondly. Because the Governor General in Council finds that you are the same person whom government before ordered * to return to Europe, in consequence of your having quitted the ship to which you were attached, and remained in the country without permission; an order which could not be enforced, from your having removed yourself out of the reach of the officers who were directed to execute it.

In consideration of the circumstances stated in your letter, the Governor General in Council

* This order was founded on misrepresentation; several thousand persons were similarly situated in India, pursuing their respective employments without molestation. I was, for near four years after the order alluded to was issued, a constant resident in the town of Calcutta. I am, therefore, at a loss to understand why the order, if the explanation given had not proved satisfactory, was not enforced by any of the preceding governors. This subject is fully explained in a subsequent letter of Captain

will allow you to remain in the country until the 25th of October next, provided that you immediately give satisfactory security to proceed to Europe, on any ship which may sail after that date, and on which he may require you to embark.

The Governor General in Council can have no intention of separating you from your family, and a charter-party passage will be allowed you both on the ship on which you may be ordered to embark, agreeably to the established usage on such occasions*.

I, am Sir,

Your most obedient humble servant,

(Signed) D. CAMPBELL, Sub-sec.

Council Chamber, July 19, 1798.

* From this it might be supposed, that to send ladies to Europe, as charter-party passengers, was a very common occurrence; but it is more than probable, that such an instance never happened before in India: at least I have not been able to find a precedent exactly in point. The accommodations of a charter-party passage are, room to swing a hammock, among the sailors, and a certain daily allowance of salt beef, biscuit, and spirits. Now, whether such accommodations have been offered by any former governor general to a lady, I very much doubt. If not, what becomes of the established usage on such occasions? But even if the precedent could be produced, precedent alone cannot justify an act of indecency any more than an act of oppression.

No. XVII.

To D. Campbell, Esq. Sub-secretary, &c.

SIR,

I have received your letter of the 19th instant, stating the reasons of the Right Honourable the Governor in Council for requiring me to return to Europe.

In answer to the first, be pleased to inform the Right Honourable the Governor General in Council, that I refused to make an apology for the insinuation of improper conduct on the part of the magistrate of Gauzeepore, contained in my letter of the 27th April last, published in the *Telegraph*, not only from a thorough conviction of its truth, but also because such apology might operate unfavourably towards my friend, Mr. Allan Maclean, in his endeavours to procure redress for a series of the most ignominious oppression, perhaps, ever exercised upon a British subject in India;—endeavours in which I was, and am still, determined to support him, by all the means in my power. If the terms of my refusal have seemed to convey disrespect, I can only say, that it was not in the smallest degree intended; and I am even convinced, that, upon a reconsideration of my letter, it will appear so to the Right Hon. the Governor General in Council himself.

Respecting the second charge, I beg leave to state, that the order of the former Governor General in Council, for my return to Europe, was founded upon a misrepresentation of the manner in which I had quitted the ship I was attached to; and that the explanation given was such as induced him not to enforce that order. What was then submitted in my justification has been since confirmed, beyond a doubt, by the acknowledgments of Captain Hudson, of the Houghton, which I have the honour to inclose for the information of the Right Hon. the Governor General in Council.

Should the Right Honourable the Governor General in Council, after what I have stated, persist in his intention of sending me to Europe, I request you will be pleased to inform him, that having, since my letter of the 13th instant, given indemnification to the two gentlemen who had become responsible for my appearance in the Supreme Court on the 25th of October, I am now as ready to comply with his requisition as I can be at any subsequent period; and that I cannot, in any case, think of troubling my friends to make themselves answerable for my conduct.

With respect to the charter-party passage which the Right Honourable the Governor General in Council has been pleased to propose for my wife, as that kind of passage is subject to in-

conveniences which I cannot permit her to share, I prefer the alternative of leaving her behind; and must, therefore, be permitted to decline the offer.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) CHARLES MACLEAN.

Calcutta, 23d July, 1798.

Attested copy of Captain Hudson's letter, inclosed in the above.

No. XIX.

To Charles Maclean, Esq.

SIR,

I am favoured with yours of yesterday: in answer thereto I am ready to declare, that I understand the cause of your having quitted the Houghton, of which ship you were surgeon, on her former voyage to Bengal, to have been entirely owing to indisposition, which rendered you unable to go on board; and, to the best of my knowledge, the official letter transmitted through the pilot to the Governor General was to that effect; and therefore, if you were reported run on the ship's books, it must have been owing to mistake, which happened without my

knowledge, and consequently without any orders given to that effect by me. On this head I shall be ready to afford the fullest explanation to any friend of yours in England, and I shall be happy to do any thing in my power to remove any difficulty or objection that may have occurred from any misrepresentation that may have been made, relative to the cause of your having quitted the Houghton, on her late voyage to Bengal.

The company's medical journal was continued on board the Houghton by Mr. Carmichael, who acted as surgeon on the passage home. It was the same journal that had been begun by you, and was regularly signed by me as commander of the ship.

I am, Sir,

Your most obedient servant,

(Signed) ROBERT HUDSON.

Calcutta, Nov. 23d, 1797.

Matters had now arrived at such a crisis, that, as government seemed ashamed to recede from their pretensions, and as I should have thought it an unpardonable dereliction of principle to have receded from mine, it appeared inevitable that I should return to Europe.

Having, under that impression, given up my house at the termination of the month of July, on the 3d or 4th of August I met, by appoint-

ment, Captain Mouggach, the town-adjutant, at a tavern, where, having received from him the following letter, I delivered myself up into his custody.

No. XX.

To Mr. Charles Maclean.

SIR, PUB. DEPART.

I am directed to acknowledge the receipt of your letter of the 23d instant, and to acquaint you, that instructions have been issued to the commander of the Honourable Company's ship Busbridge, to receive and accommodate you with a charter-party passage to England, and to desire that you will immediately prepare to embark on board that ship instead of the Mildred.

The town-adjutant has received orders to conduct you immediately on board the Busbridge, unless you will give good security to repair to that ship in due time; and her commander has been informed that he will be held responsible for the security of your person until his arrival in England, when he is permitted to release you.

I am, Sir,

Your most obedient humble servant,

D. CAMPBELL, Sub-sec.

Council Chamber, 30th July, 1798.

From the tavern I was conducted into Fort William, and from thence on board the ship Busbridge, at Saagor Roads, whose commander had received the underwritten instructions concerning me.

No. XXI.

To Captain Dobree, or the commanding Officer on board the Honouruble Company's ship Busbridge.

SIR, PUB. DEPART.

You are hereby directed to receive on board the ship under your command, and accommodate with a passage to Europe, Mr. Charles Maclean, with his necessaries.

The passage money of Mr. Maclean, who proceeds on the terms of charter party, will be paid by the Hon. Court of Directors.

The Hon. Governor General in Council directs me to signify to you his most positive commands, that particular care be taken to prevent the escape of Mr. Maclean from the Busbridge, from the period of his embarkation to that of the ship being quitted by the pilot, or by any subsequent opportunity that may happen in the course of the voyage; and to acquaint you, that you will be held responsible for the security of his person, until his arrival in England, when you will discharge him, giving due notice of the same

to the secretary of the Honourable Court of Directors.

I am, Sir,

Your most obedient humble servant,

(Signed) D. CAMPBELL, Sub-sec.

Council Chamber, July 30th, 1798.

Regulations respecting the publication of Newspapers, viz.

1. Every printer of a newspaper to print his name at the bottom of the paper.

2. Every editor and proprietor of a paper to deliver in his name, and place of abode, to the secretary to government.

3. No paper to be published on a Sunday.

4. No paper to be published at all, until it shall have been *previously inspected by the Secretary to the Government*, or by a person authorised by him for that purpose.

5. The penalty for offending against any of the above regulations to be *immediate embarkation for Europe.*

Rules for the guidance of the Secretaries to Government in revising the Newspapers.

To prevent the publication of,

1. All observations on the *state of public credit*, or the *revenues*, or the *finances*, of the Company.

2. All observations respecting the embarkation of troops, stores, or specie; or respecting any naval or military preparations whatever.

3. All intelligence respecting the destination of any ships, or the expectation of any, whether belonging to the Company or to individuals.

4. All observations with respect to *the conduct of Government, or any of its officers, civil* or *military, marine, commercial,* or *judicial.*

5. All private scandal, or libels on individuals.

6. All statements with regard to the *probability of war or peace* between the Company and any of the native powers.

7. All observations tending to convey information to an enemy, or to excite alarm or commotion within the Company's territories.

8. The republication of such passages from the *European newspapers* as may tend to *affect* the *influence* and *credit* of *the British power with the native states.*

LETTER XXII.

To the Marquis Wellesley, &c.

On his new and extraordinary Doctrines, that Magistrates can do no wrong, and that apologies to a Governor are a sufficient atonement to the offended laws of the country; and on his union of the judicial with the executive authority.

"The freedom of writing and speaking upon the topics of government and its administration" (in which I must presume the subordinate as well as the more dignified magistrates are comprehended) "has ever been acknowledged, by our greatest statesmen and lawyers, to be the principal safeguard of that constitution, which liberty of thought originally created, and which a free press for its circulation gradually brought to maturity." *Erskine's Declaration on the Liberty of the Press.*

My Lord,

In order to enter fully into the merits of the case between us, it becomes necessary to undertake the irksome task of analising the preceding correspondence. The first notification with which I was honoured by your command, (No. V. page 40) was dated the 1st of June, 1798. In this letter, you, my Lord, in requiring an apology for an insinuation of improper conduct against a magistrate, was doing that which you must have known you had no right to do; the demand was therefore not only illegal, but arbitrary, capricious, and tyrannical; and on these grounds ought to have been

resisted, even if my insinuation had been groundless, and the magistrate innocent. If every line of my letter had been libellous, seditious, or even traitorous, you could have no right to require an apology. If I had really committed a crime, by what act of the legislature could an apology made to a Governor General of India be deemed an atonement to the offended laws of my country? But that my insinuation could be *more than justified*, and that the magistrate *knew himself to be exceedingly culpable*, as well as exceedingly ignorant, are obvious from Mr. Maclean's letters to me (No. 3. and 4. p. 35. 38.), and from the great anxiety of the magistrate himself to suppress my promised appreciation of his conduct, in palliation of which he even got a friend of mine to write to me from his house at Ghauzeepore.

If you did not know that your demand was illegal, why did you not endeavour to enforce it by legal means? If you did not know that the magistrate was culpable, why did you not leave him to take his remedy by the ordinary course of law? But in a legal or constitutional view, the guilt or innocence of the magistrate, or of myself, are things indifferent. The principle extends much beyond the merits or demerits of individuals. *Under any circumstances*, such an interference, on the part of a Governor, is an usurpation of the judicial function, by the executive power, of which the constitution of this country

does not admit. Is it not besides a gross insult to the judges of the supreme court of judicature at Calcutta, and to the persons who usually compose juries there, for any Governor, in any case, to take the law into his own hands? Were these judges and these jurors deemed by your Lordship incapable of fairly trying an offender against the laws of the country? Or were you apprehensive that, in this case, they would not inflict the precise measure of punishment which was agreeable to you? Such apprehensions would in reality be the highest possible eulogium on the courts of judicature in India, the establishment of which has conferred such immense benefits on the inhabitants of that country.

Thus it stands clearly proved, if I be not widely mistaken in the nature of proof, that you, my Lord, did wantonly unite, in your own person, the judicial with the executive authority, in violation of one of the fundamental principles of the British constitution; and I am now going to prove that you committed this violation of the constitution, this usurpation of the rights of the supreme court of judicature, for the express purpose, in the first instance at least, of shielding, with the strong arm of power, an individual magistrate from censure, for having, in the exercise of his authority, committed illegal, oppressive, and scandalous acts; in effect asserting a general principle that magistrates can do no wrong.

Your secretary (No. 5. p. 40.) expressly states that it was in consequence of a representation to Government (from the magistrate of course) that he was directed to write to me. Mr. Maclean informs me (No. 4. p. 38.) that the magistrate had written to the Supreme Board, complaining; and I received a letter from a friend, written from the magistrate's house, dissuading me from publishing the promised appreciation of his conduct. Five weeks afterwards, I receive another letter from your secretary (No. 10. p. 45.), requiring me to return to Europe, your emissaries at the same time making an attempt, which I frustrated, to seize my person. From all these circumstances, and from the very terms of your subsequent explanatory letter (No. 17.), as well as from the apology (No. 9.) dictated by one of your secretaries (perhaps the present Governor General), which the editor of the Telegraph was, in the mean time, obliged to insert in his paper for having published my letter (No. 2. p. 34.), it is impossible, I say, from all these circumstances, not to conclude that your illegal and unwarrantable requisition for an apology, and my subsequent imprisonment and expulsion for refusing to make such apology, were intended, in the first instance, to protect this magistrate from farther animadversion, and to establish a precedent by which all magistrates might in future tyrannize with impunity. What could be a more direct violation

than this of the principles of the British constitution, as laid down by the highest legal authority in England (Lord Erskine), in his celebrated declaration on the press? "The extent of the genuine liberty of the press, on general subjects, "and the boundaries which separate them from "licentiousness, the English law has wisely not "attempted to define. They are indeed in their "nature indefineable, and *it is the office of the* "*jury alone*, taken from the country, in each par-"ticular instance, to ascertain them, and the "trust of the crown where no individual is slan-"dered, to select the instances FOR TRIAL, *by its* "*ministers responsible to parliament.*" Doctrines to which a great majority of the principal members of the present administration expressly and implicitly subscribed; doctrines to which every man of common sense in the kingdom must assent, and which every man of common honesty will uphold.

LETTER XXIII.

To the Marquis Wellesley, &c.

Considerations on the unconstitutional Law, which enacts that British born subjects may be transported without the form of a trial; and on the Marquis's enormous application of it in some cases, and his utter contempt of it in others.

"Mr. Pitt's Bill, assisted by the explanatory Act of 1786, beside the *new* and *extraordinary* powers given to the Board of Controul at *home*, has given to the Governor and Presidents *abroad* the most despotic and extravagant authorities:—unlike any thing that could have been supposed to originate in a free state, and utterly irreconcileable to the spirit of the British Constitution, by virtue of which despotic authority, among other enormities which, under the name of government, *may* be committed, the Governor or President of the Council may, upon his single pleasure, seize and secure any British subject in India, of whatever rank or situation, and upon the *accusation* of only one person cause him to be thrown on ship-board, or imprisoned until there shall be "a convenient opportunity of sending him to England," where by the same bill, a new tribunal and proceeding equally unheard of in the Constitution,—are provided for his trial."

Sheridan's comparative Statement of Mr. Fox and Mr. Pitt's India Bills. p. 13.

My Lord,

Far from wishing to exaggerate your conduct, I am willing to give you the full benefit of the most extravagant construction of a most extravagant law. The able description given of that law by the present Treasurer of the Navy, is so much superior to any thing I could write on the

subject that I have taken it as a motto to the letter. There are some laws, my Lord, so unconstitutional that they should not, and some so bad that they cannot be executed. Men of honour will not be the instruments of carrying into effect an execrable law, even when compulsory. Such was the memorable decree of Robespierre for giving no quarter to the English. But what are we to say, or at least what are we to think of a man, who, after the most mature deliberation, surpasses the provisions of a law, which he himself conceives not to be compulsory, and which he cannot but know is in direct contradiction to the most essential principles of the British Constitution? We must in charity suppose that a legislature, which can pass such glaringly unconstitutional acts, and a Governor who can unnecessarily go beyond the true intent and meaning of them, do not perceive the consequences of what they are doing; or we must suppose something infinitely more to their discredit. It is fitting, however, that the people of England should know the extent of their obligations to both.

The legislature to be sure only committed the small mistake of delegating an authority to the Governors of India, which they do not themselves possess, an authoriry which resides no where—that of transporting British subjects without the form of a trial. It is no new doctrine that "The "power of King, Lords and Commons, is not an

" arbitrary power. They are the trustees, not
" the owners of the estate. The fee-simple is in
" *us*. They cannot alienate, they cannot waste.
" When we say that the legislature is *supreme*,
" we mean, that it is the highest power known to
" the constitution; that it is the highest, in com-
" parison with the other subordinate powers esta-
" blished by the laws. In this sense, the word
" *supreme* is relative, not absolute. The power of
" the legislature is limited, not only by the gene-
" ral rules of natural justice, and the welfare of
" the community, but by the forms and principles
" of our particular constitution. If this doctrine
" be not true, we must admit that Kings, Lords,
" and Commons have no rule to direct their reso-
" lutions, but merely their own will and pleasure.
" They might unite the legislature and executive
" power in the same hands, and dissolve the con-
" stitution by an act of parliament."

Junius's Dedication, p. 8.

Are our fundamental constitutional laws then to be considered as not extending to India? or are they extended to that country only in some parts, and with-held in others? and if so, by what statute is the distinction established? For what purpose are the English Courts of Judicature maintained in India, if they are not to apply the English law, particularly to British born subjects? Again, if in any case, the clauses of a minor law

happen, by some unaccountable legislative inadvertency or design, to be in direct contradiction to the spirit of the fundamental laws and constitution of the realm, can these clauses ever be fairly or honestly construed into a repeal or dissolution of our constitutional statutes? Has any Governor a right, in order to serve particular purposes, to avail himself of the former, in direct violation of the latter? I say, consistently with every sound constitutional principle, he cannot. "A saving, "totally repugnant to the body of the act," says Blackstone, (vol. i. p. 89.) "is void." Upon the same principle, an act which is repugnant to the fundamental laws and constitution of the realm must be void. And it is the duty of every man to oppose a constitutional resistance to its operation.

Without entering at any length into the demerits of the laws respecting the government of India, I cannot avoid saying a few words on some of their most singular features. It must appear almost incredible to the people of Great Britain, whose attention has not hitherto been sufficiently called to the subject, that the unconstitutional clauses of those acts can be brought to operate against British-born subjects only. An American, a Dane, a Swede, a Russian, a Hindoo, a Frenchman, excepting in time of war, could not, even by the most forced construction of them, be sent to

Europe in virtue of the mere order of a Governor *.

By specifying British-born subjects as the exclusive objects of this unmeasured power, the framers of the bill (for I must suppose that the legislature could not have adverted to all its consequences) must have perceived that by extending it to foreigners, they would have been violating the spirit of the laws of nations, and might give rise to the most unpleasant disputes. If not, what did the restriction mean? But while some

* This is not the only advantage enjoyed by foreigners, at the expence of British subjects, according to the laws which regulate the East India monopoly. While the American, Danish, Swedish, and other flags pervade the Indian seas, British subjects, unless members of the Company, cannot send a single ship to that country, which their wealth and their power are constantly risked to protect. What a monstrous absurdity! But the injustice of this most pernicious monopoly, however glaring, is lost in the contemplation of its more distant, although not very remote, consequences. We do not seem to reflect that the mere loss of the trade, which is thus carried away from us by foreigners, however considerable, is comparatively but a very trifling evil. The great injury is this, that while our own naval resources are cramped and limited by the system, a magnificent nursery is established for the navies of other nations. It seems, indeed, to be a general law of monopolies, that however they may be occasionally useful at their commencement, they never fail to become injurious, in the result of their progress, to the community in which they prevail. With respect to that of the East India Company, it has always presented to my mind the monstrous idea of a giant in leading-strings. In alluding to that particular branch of the monopoly which concerns navigation, it would be inconsistent with my present object to go beyond the limits of a note. But considering it of the greatest importance to the prosperity of this country, it may form the subject of some future discussion.

respect was to be paid to the spirit of the laws of nations, that of the Constitution of Great Britain it seems was to be violated without scruple, and the British-born subject deprived at once of all his most essential birth-rights, the trial by jury, the *Habeas Corpus,* and the liberty of the press.

If a native of any foreign country, excepting when a prisoner of war, had reprehended a magistrate even improperly, he would have been entitled to a fair trial before the Supreme Court of Judicature. No foreigner, or Asiatic, *even trading unlawfully,* could have been transported by the mere *fiat* of a Governor-General. In India, British-born subjects alone are *aliens.* There at least the boasted birth-right of Englishmen consists only of a monopoly of oppression.

And while such superior privileges are accorded to foreigners over British-born subjects, it is also to be observed that there exists the most unequal rule of action for British-born subjects themselves. Is it not an extraordinary contradiction, for instance, that while a person accused of murder must be tried before the tribunal of the country, and if found innocent, restored to his family, property and business uninjured; a person only *accused* of a non-descript offence against a magistrate may be banished and ruined, without the privilege of being heard? It is insulting the ordinary rules of justice with a vengeance to apply severer penalties to accusations of trivial of-

fences than to those of the highest enormity.

" The peculiar excellence of the British Constitu-
" tion, in which, indeed, the value of every go-
" vernment may be summed up, is that it creates
" *an equal rule of action for the whole nation*, and
" an impartial administration of justice under it.
" —From these master principles results that hap-
" py unsuspecting and unsuspected freedom,
" which for ages has distinguished society in Eng-
" land, and which has united Englishmen in an
" enthusiasm for their country, and a reverence
" for their laws."

Erskine's Declaration on the Liberty of the Press.

The inconvenience and cruelty of sending to England for trial, persons accused of crimes, even of murder, committed in distant places on the high seas, has been felt by the legislature, and I observe with pleasure that a bill has lately been brought into parliament for remedying this abuse, by enacting that such persons shall in future be tried by the adjacent tribunals. The public have now an opportunity of judging whether it be not equally necessary to bring in a bill for preventing persons, accused of offending a Governor, or Magistrate, in any of our distant provinces, from being sent to England, *for* PUNISHMENT, *without trial?*

In whatever point of view we consider the acts for the government of India, many of their clauses are neither more or less than a gross violation of

the British Constitution in favor of a commercial monopoly. In their most limited sense, and under the most liberal construction, they are intolerable to every man who entertains the smallest sentiment of constitutional liberty. The clauses upon which you have pretended to act, in my case, even according to the fair and only just interpretation of them, viz. *as they relate to unlawful traders,* are precisely of that description. They are an absolute and complete violation of "the natural and inherent right of the subject to "personal liberty:" "The glory of the English law "consists in clearly defining the times, the causes, "and the extent, when, wherefore, and to what "degree, the imprisonment of the subject may "be lawful. This it is, which induces the abso-"lute necessity of expressing upon every com-"mitment the reason for which it is made: that "the Court upon an *Habeas Corpus*, may examine "into its validity; and according to the circum-"stances of the case may discharge, admit to bail, "or remand the prisoner."

Blackstone's Commentaries, vol. iii. p. 134.

But that we may not do injustice to the intentions of the legislature which enacted the laws for the government of India, we must suppose that, in giving a discretionary power of imprisonment, expulsion, and banishment, to the Governors of distant provinces, they must have had in view some distinct and reasonable grounds, upon which

these powers were to be exercised. They could never have intended them as an engine of oppression against British subjects, although they ought to have foreseen that they must necessarily become so, in the hands of men of arbitrary and despotic minds. Accordingly we find, both from the preamble and context of these clauses, that the legislature did mean to confine the exercise of the powers they delegated to the Company's Governors expressly to persons *unlawfully trading* in India, the very object of the clauses being to protect the Company's exclusive trade *. Otherwise what would have been the use of providing the new Tribunal and proceedings of which Mr. Sheridan speaks, for the trial of persons sent home by the Governors of that country?—That enactment positively infers the commission of an offence as the ground of expulsion; and the only offence stated is *unlawful trading*, or trading without a licence.

This appears to me to be the true construction of the acts of parliament, relating to India, as they regard the expulsion of British-born subjects from that country. Since the passing of these acts, however, a great many persons, of various profes-

* The words of the preamble to the clauses giving discretionary power to the Governors of sending British-born subjects to Europe are "For securing to the said united company their sole and exclusive right of trading to the East Indies and parts aforesaid."

sions, and who do not at all come under the description of traders, have gradually settled in the Company's territories. To them certainly the spirit of these provisions did not and could not extend. In their true, limited, obvious, and only possible sense, namely as they relate to unlawful traders, these clauses, if ever they were acted upon by your predecessors, had fallen, as they deserved, into complete disuse. But you, my Lord, with that chivalrous disdain for common place policy, which characterises your government, have thought proper not only to revive an obsolete, odious, tyrannical and most unconstitutional law, but to extend it, contrary to the manifest intention of the legislature, to all persons residing in India, of whatever profession or calling.

So much for the interpretation of the law, according to the manifest intention of the legislature. Let us now consider your application, or rather misapplication of it, in my case. On the 9th of July, five weeks after my refusal to make you an apology, I was favoured with a letter from your secretary (No. 10. p. 45), requiring me, *as residing in India without licence,* to return to Europe, in the extra ship Mildred, then under dispatch. Let us examine the validity of this plea. Here the offence against the magistrate is dropped, and my being without a licence is the great

out a moment's delay to settle my affairs, and my person directed to be seized. Is it not rather strange, that after having been four years a constant resident of Calcutta, without a licence, and seeing that there were many thousand persons in India equally without licences, a circumstance, which had not till then been so considered, should all at once have sprung up into an offence, in my particular case? The objection, one should suppose might have very easily been removed, by only conferring on me a licence, subject to the conditions on which such permissions were accorded to others. Were not licences freely granted to all who asked for them? Was it imputed as an offence to other persons to have resided in India without licences? The adoption of the pretext in my case might therefore be considered as both contemptible and ridiculous, if it were not something much worse. It was establishing a distinction, which destroyed at one blow that equal rule of action considered by Lord Erskine as "the peculiar execellence of the "British constitution." And it may be of some importance to consider how long our enthusiasm for the country, and our reverence for its laws, can survive the circumstances that gave them birth.

The law, respecting licences, under which you have endeavoured to cover your proceedings, must be considered as either compulsory or dis-

cretionary. I will give you every advantage in the construction of it. If compulsory, it was incumbent on you to have sent away every British-*born* subject, (for the law, under the utmost latitude of construction, as has been shewn, extends *only to them*) who had not a licence to remain in India; and you ought not, in my case, to have waited for the new offence of refusing to make you an apology. It was your duty to have put the law regularly, equally, and invariably in force, for it could not have been the intention of the legislature, either express or understood, to have left to any Governor an option to enforce, or to dispense with, a compulsory law at pleasure. If the law was compulsory, you have violated the law.

But if the authority vested in you was discretionary, you are still responsible for the manner in which you have exercised it. The law, as I understand it, in so far as it goes, is in fact discretionary.

Now I will, for the sake of argument, take your own intrepretation of the law, and suppose, what however I do not admit, that by a fair and liberal construction of it, you were authorised to send to Europe others than those who are found unlawfully trading in India, is it fitting that you should make use of this discretionary power as it were in sport? In order to shew that you made a wanton and most tyrannical use of that discretionary pow-

er, in my case, even according to your own misinterpretation of the law, it is only necessary to refer the reader to your letters, (the letters of your secretary I consider as your own.) There he will find the reasons for my expulsion from India, which you have yourself deliberately urged, so absurd, ridiculous, and comtemptible, that he must conceive it probable you would, in some future flight, proceed to transport individuals, for an offensive exclamation, or a provoking distortion of countenance. And thus British subjects might become mere play-things in the hands of a Governor!

But what will be said if I shew that you have treated the law respecting licences, which you pretended on this occasion to respect, in other cases with the most sovereign contempt? Mr. Maclean had a licence. But it did not protect him from being transported from Benares towards Calcutta. Would his licence have saved the Editor of the Telegraph from a voyage to Europe, if he had not published the apology dictated to him? Nay, have you not yourself, in your edict for regulating the press, expressly asserted, in open contempt of this very law, your right to exercise the power of transportation, without any exception whatever in favor of those who have licences? "The penalty for offending against any "of the above regulations to be *immediate em-*"*barkation for Europe*;—the very principle of

the decision of Bonaparte in the case of *Pancouke* and *Moutardier*, who had printed without publishing a book that was offensive to him: "Let the printer be sent to the Bicetre and the author to Cayenne."

This brings to my recollection an obligation which I chance to owe you. It has been a singularity of my fate to have been in collision with almost every species of despotism, from your own maiden efforts in India, to those of your imitator Bonaparte in Europe, and from the whole-sale measures of that usurper, to the pettyfogging details of a snivelling Medical Board. When detained in France, at the commencement of this war, contrary to the usages of civilized nations, a printed copy of your correspondence sent to the publie offices proved a principal mean of procuring my release. I know not whether the constituted authorities of Bonaparte, from that ignorance which characterises despotism, identified your Lordship with the constitution of this country, and thought they were conferring a benefit on me as your enemy, or from tyrannical sympathy, felt that a person, who was obnoxious to your Lordship, was also unfit to remain under the jurisdiction of their master. But of this I am certain that the correspondence which is now submitted to the public, had not been long in their possession, when I got a passport to embark for America; verifying the proverb, that there is scarcely any evil out of which some good doth not arise.

LETTER XXIII.

To the Marquis Wellesley, &c.

On his doctrine that, in respect to offences, three cyphers make an unit; and that the Governor-General must be addressed in the most respectful terms.

"La veritable grandeur est libre, douce, familiere, populaire, "elle se laisse toucher et manier, elle ne perd rien a etre vue de "pres" *La Bruyere.*

"Greatness certainly does not consist in pageantry and show, in pomp and retinue, and though a person of quality will make use of these things to avoid singularity, and to put the vulgar in mind of their obedience to authority, yet he does not think himself the bigger for them, for he knows that those who have neither honesty nor understanding, have oftentimes all this fine furniture about them.***—He that is truly noble *hates to abridge the liberties*, to depress the spirits, or any ways to impair the satisfaction of his neighbour. His greatness is easy, obliging, and agreeable, so that none have any just cause to wish it less. He is affable in his converse, generous in his temper, and immoveable in what he has resolved upon, and as prosperity does not make him haughty and imperious, so neither does adversity sink him into meanness and dejection; for if he ever shews more spirit than ordinary, it is when he is ill used, and the world frowns upon him. *In short he is equally removed from the extremes of servility and pride, and scorns either to trample upon a worm, or sneak to an Emperor.*" Collier.

My Lord,

Sensible and perhaps even ashamed of the futility of your former pleas, you again changed your ground, (No. 17, page 53,) and added a new charge still more frivolous if possible than the former ones. In this letter, written no doubt after

much consultation with the law-officers of the Company, not a word is said of the licence. The reasons *now* assigned, for the extraordinary proceedings against me, may be divided into three branches: 1st, for publishing in a newspaper a letter containing an insinuation of improper conduct on the part of one of the public magistrates in the discharge of his duty: 2ndly, when called upon *to make an apology for that offence*, refusing *in the most disrespectful terms*, to make such apology (see No. 5 for the terms): and 3dly, because I was ordered (four years) before to return to Europe, &c. Now, what inferences, I beseech you, are we to draw from all this, but that finding the position which you had first taken (the apology) untenable, you altered it to another, (the licence) which you found equally weak, and finally, feeling that both afforded but a shallow pretext for ruining and banishing a British subject, (for it is actual and harsh banishment to be forced from the place in which you are established in business and earn your subsistence, even to a better residence) thought proper to look for *new offences*, in order to strengthen your cause. It was fortunate for me that none of a more heinous nature could be found than what arose from a simple misrepresentation of a fact which was easily explained to the satisfaction of a former Governor-General, after which I remained four years a constant resident of the town of Calcutta: for if any

could have been discovered by a microscope the whole tenor of your proceedings warrants the belief that they would have been eagerly raked together:

It has been shewn in Letter XXII. that my refusing to make you an apology was both legal and proper. It has been shown in letter XXIII. that I did not come properly under the true construction of that most unconstitutional act of parliament relating to licences for residing in India; and that, *even according to your own misinterpretation of that law,* the exercise of the discretionary power vested in you was, with respect to me, indiscreet, oppressive, and tyrannical; and from the letter of Captain Hudson, of the Houghton, (p. 58, 59.) it will appear that the *new charge* of my having been ordered to return to Europe by a former Governor General is every way worthy of the rest. Such then are the grave and serious charges on which you have yourself expressly founded (17.) the extraordinary measure of my expulsion from India. It will remain with you to explain how they constitute an offence against the law, against the morals, or even against the prejudices of any community; or how three circumstances, none of which taken separately constitutes *any part* of an offence, and all of which are not only frivolous but ridiculous, can be converted, excepting by some mystical process, into a *whole* offence. I hope every man in the na-

tion will attend to this political chymistry, on his own account as well as mine; for I am now no farther interested in the decision that may be formed, respecting your Lordship's conduct, than any other member of the community. Dean Swift has somewhere said that, in political arithmetic, two and two do not always make four: But this is probably the first time that three cyphers were ever supposed to form an unit, completing the sum total of *one* offence. Your idea of offences, my Lord, reminds me of Sir Andrew Ague-Cheek in the play, who would beat a man because he was a puritan: "*Maria.* Marry, sir, "he is sometimes a kind of puritan. *Sir And.* O "if I thought that, I'd beat him like a dog. *Sir* "*To.* What, for being a puritan? Thy exquisite "reasons, dear knight? *Sir And.* I have no ex- "quisite reason for't, but I have reason good "enough."—*Twelfth Night.*

Reluctant as I feel to offend the English ear, or to accustom it to the degrading sounds of apology and licence, I must say a few words more before I dismiss the subject; for it seems to me to merit the most ample illustration. On reperusing your own three letters, my Lord (for I consider your secretaries' letters as yours), you will perceive what a ridiculous figure even a man of talent must make in print, when he is acting in contradistinction not only to truth, justice, law and the constitution, but even to common de-

cency and common sense. In your first letter, you accuse me of having published an *insinuation* of improper conduct against a magistrate, and for that *offence*, you require me *to make an apology*. I refuse; and you have no remedy. In your second letter, you drop the offence against the magistrate, and require me, *as residing in India without licence*, to return to Europe in a particular ship; and you send your town adjutant to seize my person. I receive intelligence of your designs, order my doors to be shut, and prohibit your myrmidons from attempting to enter my house by force at the peril of their lives; and they dare not persist. In this situation I write to you requiring explanations. In your third and explanatory letter (p. 53, &c.) you drop the affair of the licence, and resume my refusal to make an apology, to which you add a new offence of about the same degree of importance. You are, however, graciously pleased, in consideration of certain circumstances stated in my letter, (p. 48.) to allow me, *on certain conditions*, to remain in Calcutta for a few months longer; which I reject with disdain.

Thus you were obliged repeatedly to shift your ground; and if I had urged you farther, you would probably have made more changes of position. But being now fully satisfied of your object; I thought it unnecessary to prolong the correspondence, and, without yielding one iota of the principle in dispute, after keeping my house

shut for ten days, with sentinels stationed round it like a besieged castle, informed you that, being then *as ready* to comply with your requisition *as I could be at any subsequent period*, I should at a certain time and place convenient to myself, surrender my person to your town adjutant. This resolution was by no means founded on the exhaustion of my means of resistance. But the reasons why I thought it useless to drive you to the last degree of violence and outrage, shall be stated in a future letter.

From the whole complexion of the preceding correspondence, which comprehends all that passed between your government and myself, it might be supposed, that had I condescended to make the apology required,—had I condescended

> —— To bow and sue for grace,
> With suppliant knee, and deify your power.
>
> *Millon's Par. Lost.*

I should not have been sent to Europe. But this, as I shall shew, is an erroneous opinion: for could I even have consented to that measure, I should have been obliged besides to withhold the appreciation which I had promised of the Magistrate's conduct, to renounce the privilege of free discussion, and even to give a security for my conforming in every respect to your will, before I could have obtained permission to remain in India.

But to what monstrous doctrines should I have been subscribing? It is here, I believe, for the first time in modern ages, even virtually asserted, by a British Governor, that no comments must be made on the conduct of any Magistrate, under his jurisdiction, let him do what he will; but that, if an insinuation of misconduct should happen to escape, the proper atonement for it is an apology, not to the laws of the country (they it seems have nothing to do with the affairs of India), but to the most noble the Governor General, and which apology we are given to understand in the explanatory letter, No. 17, *should be made in the most respectful terms* * —

* To such a degree did this Governor carry his love of pomp that, as I have been informed by officers of respectability from the coast, he made stables of the East Indiamen to bring the horses of his body guard from Bengal, at an enormous expence to the Company, as if the Madras cavalry were unworthy the honor of acting as his body guard, during his stay on the coast. Here we trace Bonaparte and his inseparable Mamalukes. Could this pomp and circumstance, which disgusted every one who saw it, transfuse more energy or wisdom into the orders conveyed to Generals and Ambassadors, or obtain any useful object whatsoever? It is a false and ridiculous notion that they are conducive to any good, and however they may dazzle for a moment, instead of increasing they diminish respect; for the people, in their sentiments, are seldom mistaken. Was not Marquis Cornwallis, with only a few attendants, more respected than the Marquis Wellesley with a suit large enough to form an army? But it is necessary for those, who adopt, to justify

O but man! proud man,
Drest in a little brief authority;
Most ignorant of what he's most assur'd
His glassy essence, like an angry ape,
Plays such fantastic tricks before high heaven,
As make the angels weep!

Truly if the feelings of the Governor General of India are to be the therometer of offences in that country, it would be adviseable to look out for persons of somewhat more tractable sensibilities than your Lordship for that office.

For my own part, on a retrospect of the affair between us, I have only to say, that were it to happen twenty times over, I should not think it proper to alter any one part of my conduct; and that if my resistance to such abominable principles of government does not prove a general benefit, it is, at least, no fault of mine. But I am sure that cannot be the case. "The "injustice done to an individual," says Junius, "is some times of service to the public. Facts "are apt to alarm us more than the most dan- "gerous principles." The facts here established are indeed sufficiently alarming: and I trust the people of England will see your conduct in

pageantry and vain-glorious men, not choosing to trace it to its real source, their own dispositions, have recourse to the shallow and contemptible pretexts of the necessity of imposing upon the people.

its true point of view; that they will be sensible that to suffer the Governor of a province to violate the best principles of our constitution with impunity, is to invite despotism to our doors; and that the best laws become nugatory, if the noble sentiments which foster and uphold them be allowed to weaken or decay. If, contrary to all expectation, I should be deceived, I shall only have to lament, in common with others, the unhappy state of apathy into which we are at length fallen. But even in that case, I shall at least enjoy the melancholy consolation of reflecting that I have not omitted to do my share of the duty.

LETTER XXV.

To the Marquis Wellesley, &c.

On his assumption of the power of enforcing or dispensing with existing laws according to his own interpretation of them, and of making new laws, at pleasure, annihilating the personal freedom of the subject, and establishing in fact an absolute despotism.

"Sic volo sic jubeo, stat pro ratione voluntas."

My Lord,

Notwithstanding the reinforcement of your new charge, (No. 17.) conjured up after a lapse of six days, you were pleased to say that, in consideration of the circumstances stated in my letter of the 13th July, (No. 13.) I might remain in Calcutta till the 25th of October, *provided* I immediately gave *satisfactory security*, that I should proceed to Europe, on any ship, which might sail after that period, and *on which you might require me to embark.* And the town adjutant, in a note (No. 15.) with which he prefaced the delivery of your letter, says he is well assured that I have it in my power to give this security on the shortest notice. As I never put my friends to the test, I do not know whether I had or had not this power. But this I know, that if I had,

I should not have used it. Not having violated the law, I required no bail, or security for my appearance, and I spurned as I ought the idea of asking any friend of mine to guarantee *my obedience to the* WILL of a Governor-General. But what does all this mean? It is neither more or less than, "If you will comply with my will and "pleasure in part, I will suffer you to remain for "three months longer in India; if you will com-"ply with it wholly, I will suffer you to remain as "long as you please, whether you have a licence "or not; but if you do not in any respect com-"ply with it, I will send you immediately to Eu-"rope, *because* you have not got a licence to re-"side in India." Now I defy any man in France or in Turkey to produce me a more perfect union of complete nonsense and absolute despotism.

The insulting tone of moderation which you now assumed, my Lord, I placed to the proper account, namely a conviction on your part, that you were treading upon very slippery ground, together with apprehensions perhaps that your object might be openly frustrated by legal means. I say insulting, because there was no room for compromise. It was impossible for me, consistently with any just ideas of what is due to the laws or constitution of the country, to have conceded the principle in dispute; and all the explanations which had taken place, together with the temper of the

man, were sufficient to convince me that nothing would be conceded by your Lordship. Seeing that to continue the contest longer upon Asiatic ground would be therefore useless, I voluntarily surrendered myself to the town-adjutant of Calcutta at a time and place appointed; was carried in triumph into Fort William; and from thence hurried, under an escort of soldiers, on board an East-Indiaman at Saugor Roads.

It happened to be on Saturday that I surrendered. You, my Lord, having as I presume surmised that I might avail myself of the aid of the civil law to frustrate your designs, the moment you learnt that I had capitulated, sent a peremptory order that I should be immediately sent on board a ship. The order did not arrive till late at night. I had gone to bed, and absolutely refused to comply with it, observing that if the commandant of the soldiers thought himself obliged to enforce the order, he must use violence. He returned to the Fort-major, to whose custody I was now assigned, for fresh instructions. The Fort-major was in perplexity and doubt. His order was peremptory, yet he saw the impropriety and indecency of enforcing it. But you were at your country residence; and it would be a high crime and misdemeanor to disturb you about trifles. Of what consequence is the convenience, or even the life, of a common individual, if a great man must be incommoded? It was on the same seat of

government that so many Englishmen were smothered to death, that the slumbers of your predecessor Surajah Dowlah might not be disturbed!

Imagining what the motives of this peremptory order might be, I observed to the military agents of the Fort Major that the gates being shut for the night, no civil officers could get admission, and that the following day being Sunday, no writs could be issued; that besides my servants were gone home for the night, and that my baggage which was in the town, would be left behind. Notwithstanding these arguments, I do not believe, but for the influence of female humanity, I should have got even a single night's reprieve. Whatever may have been said to the prejudice of the sex, by poets or pretended philosophers, this is not the only occasion on which I have experienced that women have a more lively sense of, and a greater regard for, justice, as well as finer feelings of humanity, than men; and I rejoice in this opportunity of acknowledging my gratitude to Mrs. Calcraft, a lady I never saw, to whose intercession I owe it, that I was not hurried on board a ship, without even a change of linen, for a twelvemonth's voyage. After an interchange of messages, I was allowed to continue my repose, it being understood that I should be ready to embark as soon as my baggage could be got from Calcutta the next morning.

These circumstances, which are in themselves trivial, I mention in order to show that it was your own opinion, although it did not enter into my contemplation, that your arbitrary measures might have been defeated by the medium of the courts of law. That I believe could in fact have been done by an arrest for debt, or on a writ of *habeas corpus*, from which I cannot learn that India is exempted more than other parts of the British dominions.

But if it had been the intention of the legislature to have conferred on the Governor General of India an authority that must virtually supersede the fundamental principles of our constitution, and deprive the subject of his only means of protection, would they not have expressly declared so, instead of leaving a power which they thought it necessary to confer subject to be constantly defeated? I do believe that, in this case, your intentions, my Lord, notwithstanding the indecent manner in which you ordered me to be hurried on board a ship, might have been frustrated, had I applied to the judges of the supreme court, and had these judges done their duty. If I understand the law, the supreme court of judicature was bound, upon application, to grant me a writ of *habeas corpus*, as a matter of right. "If a probable ground be "shown, that the party is imprisoned without "just cause, and therefore hath a right to be

" delivered the writ of *habeas corpus* is then " a writ of right, which may not be denied, but " ought to be granted to every man that is " committed, or detained in prison, or other- " wise restrained, though it be by the command " of the King, the Privy Council, or any other." *Com. Journ. April* 1, 1628. If I had claimed the benefit of this doctrine, almost two hundred years old, it would remain to be seen how far your Lordship would have opposed your will to a constitutional mandate thus distinctly expressed. But of the two evils I preferred immediate expulsion, to the uncertainty of remaining subject to the capricious sallies of your Lordship's volition.

Having shewn that you avowedly considered yourself as entitled to enforce or dispense with existing laws, according to your own interpretation of them, at pleasure, I shall now make it appear that you assumed the privilege of making new laws, establishing in effect a complete and absolute despotism.—Instead of leaving disputes to be settled in the ordinary course of law, you determined that none should exist; as you imposed previous restrictions on publications, so you would impose previous restrictions on the actions of men. " Penalty bonds," says Mr. Maclean, in the postscript to one of his letters (No. 4.), " are sent up to be exe- " cuted by all indigo planters in this district

"(Benares), for the first complaint in court 500 "rupees, and for the second to be ordered to "Calcutta" Now, my Lord, you had just as clear a right to order penalty bonds to be signed for a hundred thousand rupees, as for five hundred, and to order the offender to Botany Bay as to Calcutta. Did you not, by this strange measure, if any measure of yours could appear strange, assert an unlimited power over the purses, as well as the persons, of his Majesty's subjects? Could you not ruin a man in a moment, by bringing him from Benares to Calcutta, for having had some trifling quarrel, or at the mere instigation of an enemy or informer? Might you not with as much propriety, and justice, and law, have ordered any of the inhabitants of Calcutta, who should act improperly in your opinion, to be sent for the first offence to do quarantine at Benares, and for the second to China *? This doctrine of arbitrarily transplanting the subject from one part of a country to another, is even more cruel and degrading than that which transfers them in whole lots from one master to another, as has lately been the abominable practice on the continent of Europe. Nor does it appear

* I will not here say any thing of the sweeping edict, by which all Europeans were ordered to quit Lucknow, that they might not be witnesses of your conduct towards the Nabob, as I believe it is actually the subject of enquiry in another place. But it shall not be lost to the public.

that, in the assumption of those extraordinary powers, you laid the smallest stress upon licences, by which, when it suited your purpose, you claimed the privilege of transportation. On the contrary, you expressly usurped the right of violating even that your favourite law. But there cannot, I apprehend, be in nature a principle more indisputable than that, when the laws of a country are superseded, whether it be by an individual or a mob, the result is in both cases absolute and complete despotism, differing only in modification, duration, and degree. Really, my Lord, I must confess that the sources from whence you have derived your principles of government, and your right to absolute power, are utterly beyond my comprehension ; nor do I much care to know them. But I trust it will be thought necessary to indulge the public with some sort of explanation.

LETTER XXVI.

To the Marquis Wellesley.

On the singularity of sending a person, accused of an offence, from India to England, in order to be liberated, not to be tried; and on his assertion of the right of exercising a jurisdiction beyond the territories he governed.

" Gnossius hæc Rhadamanthus habet durissima regna,
Castigatque, *auditque dolos*, subigitque fateri."

" First he punisheth, and *then* he trieth, and lastly compelleth to confess, and makes and mars laws at his pleasure, like as the Centurion, in the holy history, did to St. Paul, for the text saith, " Centurio apprehendi Paulum jussit, et se Catenis eligari, et tune interrogabit, quis fuisset, et quid fecisset." But good judges and justices abhor these courses." *Coke, 2 Inst. 53.*

My Lord,

If you really considered me as coming under the meaning of those clauses of the acts of parliament respecting India, which give governors, in certain cases, the power of transportation, in order to be consistent, according to your own interpretation of them, you ought to have sent me to England, *not* to be liberated, but to be tried. The very words of the act of 1793 are, " there to answer for his, her, or their offence, " according to due course of law."—See the 33d of Geo. III. cap. 52. § cxxxii.—Thus the law

clearly infers an offence, for which a specific punishment is provided. I think, then, I have just cause of complaint that you did not, at least after inflicting punishment, give me an opportunity, by the forms of a trial, to shew how far I had deserved it. Even the judge of hell tries, *after* having punished, an offender. But you, my Lord, adopt a course of justice peculiar to yourself: I am sent on board a ship, where I remain twelve months a prisoner, according to the definition of Dr. Johnson, with the constant risk of drowning. On arriving in England I naturally expect to be tried according to the provisions of the law on which you pretended to act. But no prosecution is brought, or even meditated. You well knew, my Lord, that the circumstances would not bear an investigation. You knew that the law itself could not stand the test of a single trial. Why then such solicitude that I should be kept a prisoner till my arrival in England? Did you apprehend that, if released sooner, I should return to participate in the blessings of your free government? You could scarcely, I think, have formed so false an estimate of my ambition. Your Lordship must therefore pardon me if I suspect the order had no object but to gratify the yearnings of a tyrannical mind.

The instructions of your secretary to the captain of the Busbridge are also exceedingly curious in another point of view.—" The Honourable

" the Governor General in Council directs me
" to signify to you his *most positive commands,*
" that particular care be taken to prevent the
" *escape* of Mr. Maclean from the Busbridge,
" from the period of his embarkation to that of
" the ship being quitted by the pilot, or *by any*
" *subequent opportunity that may happen in the*
" *course of the voyage ;* and to acquaint you that
" you will be held responsible for the security
" of his person till his arrival in England, *when*
" *you will discharge him,* giving due notice of
" the same to the secretary of the Court of Di-
" rectors."—(Letter 21.)—This open and manly assertion of the right of extending your jurisdiction beyond the territories you govern deserves, I believe, the credit of originality. The doctrine indeed has since been adopted, and much improved upon; by that friend to good government, Bonaparte. If ever that prince of despots should realize his project of becoming emperor of the West, he will find an emperor of the East ready made to his hands. How compendiously will the world be governed !

From the nature of your orders to Captain Dobree, he could not, but at his peril, suffer me to land at Madras, Ceylon, the Cape of Good Hope, the Brazils, St. Helena, or wherever else we might happen to touch, until the Busbridge should arrive in England. After having occasioned the dilapidation of my property, and the

loss of my business in India, I was not to be permitted to avail myself of any opportunity that might occur of settling advantageously in any other country, where we might sojourn previous to the ship's arrival in England; and this without any apparent motive. If you had ordered Captain Dobree to throw me out at one of the port holes, or to suspend me from the main top-mast cross-trees in irons * during the passage, it would not have been a more perfect, although a more odious instance, of abuse of power, and violation of law and justice.

Since I was consigned to England exclusively, not for the purpose of being brought to trial, but apparently for your Lordship's amusement, you will perhaps expect that I should be grateful to you for not having ordered that my voyage should be farther prolonged to America, or perhaps round the world; or that you did not take the fancy of ordering me to be re-shipped for India, in order to enjoy in a fuller degree the benefits of your own mild administration. If the King of

* When the Bushridge arrived in Madras Roads, it was actually reported in the place that I was on board in irons. The case, as I have here chosen to bring it forward, being entirely on principles of a public nature, I have avoided stating the losses, or the hardships, which I suffered in consequence of the proceedings of the Marquis Wellesley; or, which is of still greater consequence, the injury to my character, (as dear to me as his can be to the Marquis Wellesley), which must have resulted from them, *since to those who oppress, or persecute, it is necessary to defame.*

England, my Lord, were to ship any one of his subjects for refusing to make him an apology, (a thing his most Gracious Majesty would never think of exacting if he had the right) in a vessel going on a voyage of discovery round the world, in order to deprive him of the protection of the laws, what would the people of this country think of such a proceeding? But I beg his Majesty's pardon for placing him for a moment in such unconstitutional company.

You, my Lord, like other great men, are ambitious, even in the exercise of your clemency, of displaying an originality of genius. Was it to enable me to seek redress for oppression commitmited at the distance of 5000 leagues, after having despoiled me of all the ordinary means of obtaining it, that you gave such particular instructions to land me in England only? For this favor, permit me to acknowledge my particular obligations, as well as for the unostentatious manner in which your secretary announces the gracious intention: "He (the captain) will be held "responsible for the security of your person un-"til his arrival in England, *when he is permitted* "*to release you.*" What a volume of tyranny in six words!

LETTER XXVII.

To the Marquis Wellesley, &c.

On his extinction of the Liberty of the Press in India, and his establishment of an Imprimatur.

"To subject the press to the restrictive power of a licencer as was formerly done, both before and after the revolution, is to subject all freedom of sentiment to the prejudice of one man and make him the arbitrary and infallible judge of all controverted points in learning, religion and government."

Blackstone's Commentaries, vol. iv. p. 152.

My Lord,

I have hitherto argued the case between us entirely on the grounds which you have yourself thought proper to take. But the truth is that, while my refusal to make an apology formed but a collateral reason for the measures which you chose to adopt, and the want of a licence was but a mere pretext, indispensible however in so far as it was the only plea on which you could resort to arbitrary proceedings, your principal view was to aim, through me, a deadly blow at the liberty of the press in India, the extinction of which had been a favorite object of your ambition. To suppose that you had no motive for my expulsion less ridiculous than those which you chose yourself to assign, would be greatly to undervalue your understanding. You knew, I presume, that I

was proprietor of a newspaper and a magazine. You was also probably informed that I was not a person capable of surrendering my right of free discussion, or submitting the length, breadth, and thickness of my ideas to be squared by the rule of any secretary to the government, however ingenious. If so, my Lord, most assuredly you were correctly informed. All attempts to limit the freedom of discussion, whether made by a banditti professing liberty and equality, by the rapacious usurper of an imperial throne, or by the tyrannical governor of a province, I hold in equal detestation and abhorrence, and shall ever be ready, according to the humble measure of my ability, to frustrate or oppose them as becomes the subject of a free state. You was therefore perfectly right, consistently with your own views of extinguishing the liberty of the press, to contrive my imprisonment and removal, for while I remained free you could not have extinguished that liberty, or imposed your favourite imprimatur. That such was your real object is proved beyond a doubt by your general regulations for the press, as well as by the particular acts recorded in Nos. 7, 8, and 9 of the preceding correspondence.

These documents most clearly shew that the plan of attack was not so much directed against me personally, as against the whole system of public discussion. The editor of the Telegraph was required to make an apology for having in-

serted my letter: "But I know not," says he, "if it will be accepted." It certainly was not accepted. A more abject one was dictated, (No. 9.) and the unfortunate editor of the Telegraph was obliged to insert it under the penalty of transportation, having a wife and seven or eight children to take along with him. He had undoubtedly the best reason in nature for submitting to an act of degradation, and I am far from blaming him for it. But the terms of the apology dictated to this unfortunate man are so furious a specimen of the performance of a Governor of fifty millions of people, in his editorial capacity, that it is worthy of being studied by the present generation, and transmitted as a model of apologetical perfection to posterity. "The editor, from *error in judgment*, having inserted a letter in the Telegraph of the 28th of April, under the signature of Charles Maclean, and also a subsequent letter *on the same subject*, in the Telegraph of the 12th May, signed *Habeas Corpus*, and the terms of both the said letters appearing *to him*, on re-consideration, to be extremely improper, he is *induced* to apologise for having inserted them; *particularly* as the writers of the said letters have *assumed* a privilege of animadverting, THROUGH THE MEDIUM OF A PUBLIC PRINT, upon the proceedings of a court of justice, and of censuring the conduct of a *public officer*, for acts done in his *official capacity*."

Now, my Lord, although from the novelty of your apologetical labours they ought to be treated tenderly in a literary or grammatical point of view, I cannot but notice a few contradictions in sense, which have escaped you, perhaps in the rapidity of diction. In the first place, if we did not know otherwise, we should suppose the editor of the Telegraph had been induced *by* himself to make a public apology *to* himself for having *committed an error in judgment*. We should also suppose that the privilege of animadverting upon courts of justice was new and unknown; that public prints are an uncommon medium of animadversion; and that it was altogether unusual to censure public officers but for acts done in their *non*-official capacity.

In this auspicious manner, my Lord, commenced the war against the press, which you have since carried on, in India, with so much valour and with such uniform success. Encouraged by your first victories, your exploits acquired vigor in their progress, until they at length terminated in the *ne plus ultra* of human despotism, the direful regulations here published, (page 62 &c.;) regulations of so exquisite a hue as to deprive the literary labors of Bonaparte of every merit of originality, and to call up the blush of envy and of shame into his pale Corsican cheek. After my expulsion from India, and the apologies of the editor of the Telegraph, the system of terror was

completely established, throughout the literary department, and every *error in judgment* rendered impossible, by the *infallible superintendance* of one of the secretaries to the government. But the regulations, by which the newspapers of India were definitely chained, were not until some time afterwards formally transmitted to the different presidencies.

Thus skilfully fettered, my Lord, you have bequeathed the care of the press to your former secretary and worthy successor, who may enjoy the inheritance without incurring the odium of the acquirement. The system of licensing, which, after the lapse of a century, you have recalled from the tomb, is in more than one respect deserving of our most attentive consideration.—Without entering into the merits of the resuscitation at this time of the day, I shall here only observe, that your mode, compared with that formerly in use under despotic governments, is very far from being an improvement. You have thought proper to confer the office of licencer on one of the secretaries to the government, for the time being, with or without a salary, it matters very little which. Now I should be glad to be informed under what responsibility to the public this licencer is acting? He may be changed from day to day. He has no character to support in the scientific or literary world. He may

common letters of business; but I should doubt very much of his skill in judging of the moral or political tendency of publications. I fear, if the licencers of the press under the ancient French monarchy had not been more exquisite, as well as more impartial, and independent, judges of literary productions, than the secretaries to our Asiatic governments, the world would have been deprived of the works of Montesquieu, Helvetius, Rousseau, and Voltaire. Raynal's East and West Indies, if submitted to your licencers, my Lord, would certainly never have seen the light; and the manuscripts of Bacon, Milton, Shakspeare, and Locke, I am rather apprehensive, might have been suspected of containing some latent heresy, and condemned to be burnt by the hands of the common hangman. And who indeed can say that already works of the sublimest genius have not been brought to an untimely end by your "arbitrary and infallible judges of "all controverted points in learning, religion, "and government."

But do not mistake me, my Lord, as admitting that, if you had appointed the most able and the most upright man in the universe as the licencer of the press, the system can, under any modification, be tolerated; that it was either necessary or expedient; or that it is compatible with the existence of the smallest degree of freedom. In short, the right to impose previous restrictions upon

publications is a pretension too atrocious to have been made even by the most profligate of our tyrants; and its open avowal is unexampled in the modern history of the nation.

It is a gross and most stupid error which apprehends any danger to society from the freedom of the press. Was the press free in France when every species of atrocity was perpetrated with impunity in that country? No! It was always in the hands of some demagogue or faction, "the arbitary and infallible judges, for the time "being, of all controverted points in learning, "religion, and government."—Nay, if the press had been free, it would have been utterly impossible that the atrocities of that æra could have been palliated, concealed, tolerated, or committed. And what great difference is there between a French demagogue, or usurper of power, and an English demagogue or usurper of power? He must be a person wholly incapable of deriving benefit from instruction, who can impute to any man desirous of imposing restrictions upon the press, however he may dissemble his views even from himself, any other than the most atrocious intentions. Of this I am very certain, that he who would most strenuously resist internal oppression, being most sensible of the blessings which we enjoy, would also be the most zealous to defeat foreign invasion; and that the domestic invader of our rights would, on the very same principle, be the first to betray us to a foreign ene-

my. If ever we become indifferent to the one, we shall by a natural progress soon be reconciled to the other; and then we should deservedly suffer the common lot of slaves.

But if any thing in nature can call forth our blushes, how must we redden at our own tameness, when we peruse the manly language in which Milton treated this subject more than a century and a half ago: "We have it not (book-
"licensing) that can be heard of, from any an-
"tient state, or polity or church, nor by any
"statute left us by our ancestors, elder or latter;
"nor from the modern custom of any reformed
"city, or church abroad; but from the most anti-
"christian counsel, and the most tyranneous inqui-
"sition that were enquired. Till then, books were
"as freely admitted into the world as any other
"birth; the issue of the brain was no more stifled
"than the issue of the womb; no envious *Juno*
"sate cross-legged over the nativity of any man's
"offspring: but if it proved a monster, who de-
"nies that it was justly burnt or sunk into the
"sea." AREOPAGITICA.

There is another inconvenience attending the species of imprimatur which you have set up, and which, although it does not concern the public in general, is a serious grievance to those whom it affects:—*Proprietors of Newspapers may have to stop the press, and to disappoint the public, if they do not know where the Secretaries to the Government have been dining.*

LETTER XXVIII.

To the Marquis Wellesley, &c.

On his violation of the principles of the British Constitution, by the open and unprecedented assumption of the right of laying previous restraints upon publications.

"This liberty (that of the press) is justly dear to every British subject. The Constitution *admits* of no *previous restraints* upon publications *of any description*; but there exists judicatures *wholly independent of the executive government*, capable of taking cognisance of such publications, *as the law deems to be criminal*, and which are bound to inflict the punishment the delinquents may deserve."

Official Correspondence between Britain and France, 1803, p. 26.

My Lord,

It is a curious fact, whether it be considered as a coincidence, or only an imitation, that Bonaparte attempted to impose the same previous restrictions on the press in Britain, that your Lordship so successfully imposed in India. On perusing your regulations (page 62, et seq.), we find that the very first rule for the guidance of your secretaries in revising the materials for the press, enjoins that they shall *prevent* all such publications as shall appear to them of a certain tendency. But it is the law of the land, and the British government, in their official correspondence with

that of France, have expressly recognized it, that the British Constitution does not admit that any previous restraints should be laid upon publications of *any description*: and what are the topics which you have ordered not to be discussed? with a few exceptions, precisely such as are most essential to be known. Observations *on the state of public credit, the revenues, the finances;* the embarkation of troops or specie; naval or military preparations; the destination or expected arrival of ships; the *conduct of government or any of of its offices, civil or military, marine, commercial, or judicial*; ***** statements with regard to the probability of war or peace; observations *tending* to convey information to an enemy, or to excite alarm or commotion within the company's territory; the republication of such passages from European newspapers *as may tend* to affect the influence and credit of the British power with the native states.

Now, in the name of common sense, I should be glad to know what species of information is left for the unhappy editors of newspapers to convey; unless it be the periodical ablutions of the Brahmins in the river Houghly, or the splendid processions of the Governor-General to the distant provinces? These gentlemen, indeed, will derive this miserable advantage from the change, that their responsibility to their readers, and to the government (the laws are out of the question) will

be totally done away, since all their matter must be previously shaped and fashioned according to the ideas of some curious secretary, and of course rendered perfectly agreeable to the feelings of the most noble the Governor General.

You have surely not considered, my Lord, that if there be any subject on which publicity is essentially necessary to a nation, it is that of the state and appropriation of its finances. Let us, for a moment, contrast the darkness with which you have enveloped the finances of India, with the love of publicity which forms so prominent and excellent a feature in the character of the present Chancellor of the Exchequer, and which, if his ambition be of the right kind, he will never depart from. In laying before the public a statement of the finances of Great Britain, for the present year, he thus expresses himself:

" If he indulged any pride in the financial detail
" which he had just laid before the House, it was
" this, that it is entirely open and without con-
" cealment. He had ever been of opinion that
" the publicity and notoriety of the financial af-
" fairs of Great Britain had been the prime source
" of her strength and success. He trusted this
" frankness and absence of disguise would never
" be departed from. Like the old Roman moralist
" he would wish so to build his habitation that
" every corner should be open to every eye, and
" every passenger become a spectator of what was

" going on within.—He believed if there were a " system in the world to which this sentiment " might be justly applied, it was the financial sys- " tem of Great Britain. If there was any point he " was more ambitious to attain than another, it " was the character of promoting that knowledge " and publicity. He should look to it on all oc- " casions, and consider it as inseparably connected " with the discharge of his duty to his country."

But your system, my Lord, is that of darkness, mystery, and concealment, in every department. How, in the fettered state of the Asiatic press, can the inhabitants of India, whether European or native, know what is doing in Europe, or the inhabitants of Europe know what is doing in India? Commercial men cannot, but by means of private correspondence, even hear of the arrival or departure of ships. The consequences of such dreadful ignorance are too shocking to bear contemplation. Look at the state of the continent of Europe, and say whether that would have been so deplorable as it now is, if the liberty of the press had continued to exist, even in a factious state, in France. Do you believe that, if the press were free at Paris, Bonaparte would venture to issue orders, which are now implicitly obeyed, and dare not even be questioned? Do you believe that, if there were a press at Vienna, the recent calamities of the German empire, occasioned by the imbecility, blunders, and treachery of individuals,

might not have been averted? Do you believe that, if a free press existed at Berlin, the wretched and mischievous policy of the Prussian Cabinet would have so long continued to prevail, to its own disgrace, and to the detriment of all Europe? Do you imagine that the press of Calcutta had continued to enjoy its wonted freedom, even your own measures, my Lord, might not have received salutary checks, when erroneous, and essential assistance when correct?

Such is the powerful nature of truth, my Lord, that, with a free press for its circulation, the pernicious abuses to which so many nations are unhappily a prey, would instantaneously disappear, and the oppression by which their inhabitants are ground to dust would speedily vanish. Despotism has a natural affinity to darkness; liberty to light. As flowers are nurtured into blossom by the heat and light of the sun, so are the virtuous propensities of man thrown into action by the animating beams of freedom. Immoderate abstraction or intensity are equally fatal.

With a press perfectly free, good institutions acquire perfection, and bad ones disappear. But the liberty of the press being extinguished, bad institutions spring up apace, and scarcely any good one can continue to exist. Were I asked what part of our glorious constitution it would be most fatal to lose, I would answer without hesitation: "the liberty of the press. Leave me

" that, and I will ensure the rest. But take that " away, and I cannot answer a single moment for " any other part of the fabric." I do not believe, my Lord, (for really I do not think you a mere devil), that at the commencement of your war against the press, you had any idea of the length you might be induced to go, or of the enormous criminality of your object. But having once embarked, you thought it inconsistent with your dignity to return. Of what consequence is it to a nation, my Lord, if they are enslaved, whether the mischief arise from ignorance or design? We have a grand lesson of colonial alienation before us, which may show the danger of arbitrary proceedings in our distant provinces. Did not the tyranny of Governors, in concurrence with injudicious pretensions of the legislature, first produce those discontents, which terminated in the separation of America from Great Britain. That separation may now, indeed, be productive of a good to the world which was little foreseen. If the principles of such men as you and Bonaparte should unhappily prevail in Europe, liberty will still have *one* asylum in the universe.

For the comparatively moderate measures of our American governors, however, some plausible pretexts, some shadow of justification might have existed. But what possible justification can be attempted by you, for having utterly extin-

be the stale and vague pretext of state necessity, the usual arguments of tyrants * ?

——So spake the fiend,
And with necessity, the tyrant's plea
Excus'd his devilish deeds.

Milton's Par. Lost.

But besides that public men may easily mistake the gratification of their own particular propensities for the general good of the state, no species of necessity, at least no necessity under which you, my Lord, as Governor General of India, could have laboured, can be admitted as an excuse for violating the most essential principles of the British constitution. Was you even beset with treason, sedition, insurrection, it would have formed no justification of your conduct, since there were British courts of judicature to try offenders. But the fact is, that there was even no visible pretext for your violent attack upon the press. Are the natives of India become politicians? Or rather, are they not the least refractory subjects upon earth? Did you design, by disgusting the Europeans, to conciliate the natives? Or what, in the name of wonder, could your intentions have been? Was not the press much more free, or licentious if you will, under the administration of Mr. Hastings, and other

* I find I was mistaken. Since this was written the *approbation of the Court of Directors* has been pleaded in defence of the Mar-

Governors, than it was, at any time, during that of your Lordship? They, particularly Mr. Hastings, were even personally attacked. But they had too much conscious dignity and good sense to resent these ephemeral effusions of discontent, and too much wisdom to think of restraining the liberty of the press, on account of its occasional licentiousness. "Good men," says Junius "to "whom alone I address myself, appear to me to "consult their piety as little as their judgment "and experience, when they admit the great and "essential advantages accruing to society from "the freedom of the press, yet indulge them-"selves in peevish or passionate exclamations "against the abuse of it. Betraying an unrea-"sonable expectation of benefits pure and en-"tire from any human institution, they, in ef-"fect, arraign the goodness of Providence, and "confess that they are dissatisfied with the com-"mon lot of humanity." *Preface.*

After disobeying the orders of the Court of Directors, and treating the principles of the British constitution with contempt, what more could be expected but that, if there were no obstacle but your own inclinations, you would have declared yourself independent of both? But your restrictions on the press constitute by far the most extraordinary measure that I have heard or read of in civilized times. It is even the most extraordinary act of your own government. If there

were really any rational grounds for a measure of political audacity, on which very few Governors would have chosen to venture, you, my Lord, with all the ingenuity that belongs to you, will no doubt be able to explain. At present, however, it must be regarded as a singular phænomenon in the history of British government, that the press, in our great Eastern empire, should be subjected to restrictions, which would be reckoned disgraceful in any of our little islands in the West Indies, of which the inhabitants are principally slaves.

These restrictions I shall first consider, as they are a violation of the British Constitution, *which admits of no previous restraints upon publications of any description*; and for this doctrine, without going back into antiquity, I will quote an authority to which even your Lordship will not object: I mean that of Lord Hawkesbury. It is yet in the recollection of every one, that, while this Nobleman was Secretary of State for Foreign Affairs, Bonaparte roused the utmost indignation of every British subject, by attempting to dictate limitations to the press of this country, not however one tenth part so degrading as those you have imposed upon the press of India. When "*the "first of a long series of conflicts between the "greatest power in the world, and the only free "press remaining in Europe**," began, Lord

* Sir James Mackintosh's speech on the trial of Peltier.

Hawkesbury, in his answer to M. Otto's representations (see correspondence between Great Britain and France, &c. 1803, p. 26), declared the liberty of the press to be "justly dear to every "British subject. *The constitution admits of no* "PREVIOUS *restraints* upon publications *of any* "*description*; but there exist judicatures, *wholly* "*independent of the executive government*, capable "of taking cognizance of such publications *as* "*the law deems to be criminal*, and which are bound "to inflict the punishment the delinquents may "deserve."

Now I beg you will have the goodness carefully to compare this clear, and luminous exposition of the noble Secretary of State, with your own general regulations for the press in India, and with your summary proceedings in my case, and to tell us whether you think you have not violated the principles of the British Constitution, of common justice, and of common sense; whether you, a mere Governor of a province, have not taken upon yourself to do that which his gracious Majesty cannot do, and that which has never been claimed by any branch of his illustrious house, *to impose previous restraints upon publications, of which the constitution of this country does not admit.*

The murderer of his friend, whom we so justly abhor, only takes away the life of one individual,

the successful invader of the freedom of the press, deprives us all of the condition which alone renders life worth the holding, and of the means of exposing and punishing his own iniquities. Instead of my own crude thoughts, let me state the ideas of Milton on this subject, which may be considered as a genuine instance of the sublime: "Who kills a man, kills a reasonable "creature, God's image; but he who destroys a "good book, kills reason itself, kills the image "of God, as it were in the eye. * * * * We "should be wary therefore what persecution we "raise against the living labours of public men, "how we spill that seasoned life of man, pre-"served and stored up in books; since we see a "kind of homicide may be thus committed, "sometimes a martyrdom, and if it extend to the "whole impression a kind of massacre, whereof "the execution ends not in the slaying of an "elemental life, but strikes at that ethereal and "fifth essence, the breath of reason itself, *slays* "*an immortality* rather than a life."

AREOPAGITICA.

An admirable idea of De Lolme on the liberty of the press, is so peculiarly applicable to the present subject, that I cannot help quoting it: "In short, whoever considers what it is that con-"stitutes the moving principle of what we call "great affairs, and the invincible sensibility of

" man to the opinion of his fellow creatures, will
" not hesitate to affirm, that if it were possible
" for the liberty of the press to exist in a despo-
" tic government, and (what is not less difficult)
" for it to exist without changing the constitu-
" tion, this liberty of the press would alone form
" a counterpoise to the power of the prince. If,
" for example, *in an empire of the East*, a sanctu-
" ary could be found, which rendered respectable
" by the ancient religion of the people, might
" insure safety to those who should bring thither
" their observations of any kind; and that, from
" thence, printed papers should issue, which, un-
" der a certain seal, might be equally respected;
" and which, in their daily appearance, should ex-
" amine and freely discuss the conduct of the ca-
" dis, the bashaws, the vizir, the divan, and the
" sultan himself; that would introduce immedi-
" ately some degree of liberty." To this ingeni-
ous idea I will just add that, if any man, of a ro-
mantic turn of mind diametrically opposite to that
which distinguishes your Lordship, had taken the
fancy of introducing into India, that sanctuary
mentioned by De Lolme, there is no place upon
earth where he could have done it with less risk
of danger.

LETTER XXIX.

To the Marquis Wellesley, &c.

A few words on his general government.

"Ego ita comperi, omnia regna, civitates, nationes, usque eo prosperum imperium habuisse, dum apud eos vera consilia valuerunt." *Sallust.*

I will now, my Lord, ask any man of the smallest particle of candour, what could have been expected from that arbitrary spirit, of which I have given such damning specimens, when carried, as it must have been, into the various branches of the administration of public affairs, but that it should produce, among the native powers of India, disgust, irritation, revolt, and war? Accordingly during the whole course of your administration, India has experienced these calamities in so full a measure, as scarcely to have enjoyed a single day of repose.

Nor let our common sense be insulted by being told, that it argues great talents in a Governor General, with a numerous and one of the best composed armies in the world, together with the whole power and influence of the British empire at his back, to vanquish, either in conjunction or detail, the half-disciplined rabble

of a few petty princes of India. To those who are acquainted with the country such boasts must appear ridiculous in the highest degree. If a school-boy were placed at the head of the government of India, I maintain that he could not, but by superseding the King's and the Company's old and experienced officers, to make room for his own ignorant or inexperienced favourites, avoid conquering. But this no Governor could do while the liberty of the press existed. He could not, but by the extinction of that liberty, prevent the affairs of British India from flourishing, almost without a battle.

There might, indeed, have been a time, as in the administration of Mr. Hastings, when to have even preserved a footing in India required energy and wisdom. There might have been a period, as during the mild administration of Sir John Shore (Lord Teignmonth), when, from the discontents of the army (I was there at the time, and a critical period it was) it required the most consummate prudence to restore order and safety.* But we do not find that these Governors thought themselves authorised, or thought it would contribute to promote their

* To such a height had this danger arisen, that it was even reported at Calcutta, that the officers of one of the distant cantonments had put the Commander in Chief (General Abercrombie) under arrest.

views, to impose restrictions upon the press, to blindfold the people. Certainly, at either of these periods, the intemperance which has characterised your government, my Lord, would infallibly have lost India. And it remains yet to be proved that the precarious advantages which, under the most favourable circumstances, you have lately gained by dethronements, bloodshed, and battles, might not have been more firmly secured by prudent negociation.

But a single moment's reflection will teach us that the pure ignorance which prevails on these subjects in Europe is entirely to be attributed to the extinction of the liberty of the press in India. At every step, indeed, we meet with some calamitous consequence of that extraordinary measure; and the farther we travel the more dismal will the prospect appear: "Let it be instilled into your children, let it be "impressed upon your minds," says Junius, "that the liberty of the press is the *palladium* "of all the civil, political, and religious rights "of an Englishman."

Those who wish to know the extent to which, in your transactions with the native powers, you have pushed what are commonly, although, perhaps, not very justly, called Machiavelian principles of policy, will be able, notwithstanding the great pains that have been taken to disguise them from the world, to collect much

information from the investigations that are now afloat. I recollect, after my expulsion from India, reading some justification of your conduct in commencing hostilities with Tippoo, deduced from documents *afterwards* found in the capital of that unfortunate monarch. My exclamation at the time was, and it happened to be prophetic, what a valuable depot of justification will Seringapatam prove to the Marquis Wellesley! Your general and very commodious doctrine towards the Princes of India, especially since the fortunate discovery of that depot, may be summed up in a few words: "If you keep "up an intercourse of friendship with any "power, which may give rise, *in my breast*, to "*suspicions* of *hostile intentions* towards the Bri- "tish Government, I will immediately declare "war against you, sack your capital, and em- "ploy my Persian translator to comment upon "the papers purporting to be your correspon- "dence with other powers, that *may be found* "in your cabinet, which commentaries I will "publish to the world, to shew that you were a "traitor to the British power, and that I was "justified in attacking you. But farther, I "would have you to know, that it is my fixed "determination, if any correspondence shall be "found in the cabinet of any dethroned prince, "*inferring* even hostile *wishes* on your parts to "the British power, to punish you, or if by

" death you should elude my grasp, your poste-
" rity, with dethronement and loss of territory,
" *at least*; and that I shall consider all mutual
" expressions of regard, in the common hyper-
" bolical stile of Asiatic compliment, as inferring
" the crime of hostile wishes against the British
" power."

Such, my Lord, without any strained inference, is a correct abstract of your doctrines of the laws of nations; and they are of so extravagant a nature, that the public will be curious to know the Grotius's, the Puffendorfs, and the Vattels of the East, whom you deigned to consult as your authorities. But lest I should be suspected of exaggeration, I must particularly request the reader would peruse a pamphlet, printed for R. H. Evans, Pall Mall, entitled, *The Carnatic Question considered, in a Letter to a Member of Parliament*, &c. There he will find ably and perspicuously detailed, by a gentleman possessing much local as well as general knowledge of Asiatic affairs, the extraordinary transactions relating to the dethronement of the Nabob of the Carnatic, which Mr Sheridan so repeatedly and so forcibly characterised, in the House of Commons, by the epithets unjust, inhuman, and atrocious. The frequent absence of this gentleman from Parliament, on the recent discussions of Asiatic affairs, has to many been the subject of surprise and regret. But those who

know the unalterable principles of that eloquent statesman and patriot, and that he stands irrevocably pledged to wipe away a foul stain from the character of the country, by bringing this most iniquitous transaction before the legislature, to be by them, in its principles and in its consequences, most solemnly disavowed, remain confident in their expectations that his pledge will not be long unredeemed.

Your conduct towards some other Princes of India are already in a train of discussion before parliament. From the confusion and doubt which will purposely be attempted to be thrown on them, it will, perhaps, be difficult for the public to form a true judgment of their merits or demerits. But I think no man can fail to understand, that to go through the solemn mockery of treaties with Princes, whom those who sign them declare *not* to be independent of the Company, to whom, "in all the forms of peremptory obsequiousness," they dictate in respect to their military, administrative, and, I may almost say, down to their culinary, establishments, is one of the most impudent pieces of acting with which the world has ever been insulted, or by which humanity has ever been outraged. That policy which consists in violating the essence, while professing respect for the forms of justice, is disgraceful to the last degree to a civilised nation. I should be glad to ask any Asiatic Governor or Member of Council,

what rights they consider those unhappy Princes, who neither enjoy the dignity of independent sovereigns, or the security of ordinary subjects, to possess? To answer the question satisfactorily would, I believe, puzzle the most ingenious casuist among them. It is, however, very easy to answer it truly. They have no rights whatsoever; but are wholly dependent on the will of the Company's Governors. Their condition is even more precarious than that of an African slave, who has at least the interest of his owner as a guarantee for his personal security.

To persons wholly unacquainted with the affairs of India, the subject may be obscure and disgusting. Those, however, who dislike the labour of wading through voluminous documents, will find a tolerably correct image of the state of that country, in the actual situation of France and its surrounding tributaries and vassals, now falsely dignified with the name of fœderative states; the principles pursued by you in India being precisely the same which, when *afterwards* pursued by Bonaparte in Europe, deservedly encountered the reproach and execration of the world; nor do variations of turpitude depend solely upon degrees of climate.

To what tribunal can the miserable natives of India, if their *kists* should be levied by military execution, if they should be oppressed by Euro-

pean magistrates, or dethroned by a Governor General, resort for redress? Where can they find a press through which to utter their groans? Not one. They must be all buried in the compassionate bosom of some Secretary to the Government! Still less can the aggrieved Princes, or subjects, of India, penetrate through the clouds of misrepresentation and sophistry, by which their claims are purposely obscured, or hope as to procure redress in Europe? Under the present system it is utterly impossible. The miserable native has nothing to do but to submit. But it is astonishing that it should be expected by any Governor, that the pitiful affectation of respect to the rights of the natives, which consists in deposing one nabob, and setting up another more obsequious, should pass for aught but robbery, on any person in the intellectual scale above the rank of an ideot. If the benefit of the natives formed any part of the consideration, it would be much better consulted by allowing the deposed Nabobs and their families a provision proportionate to the revenues of which they had been deprived, taking their territories avowedly under the jurisdiction of the Company, and admitting the inhabitants to all the privileges of the English laws.

If our authority must be extended, it should be done in the manner least prejudicial, or rather most advantageous, to the natives. But on the present most odious system, precisely the reverse

is the case. The people are subjected to double burdens, since they must raise the tribute paid by the nabobs to the Company, and bear the expence of their own governments besides. Under such a regime there can be no justice, there can be no security, there can be no safety, there can be no peace. Every thing is essentially arbitrary, capricious, and despotic, and it would be less cruel to the feelings of the miserable native to leave him exposed to the incursions of the irregular plunderers of his country, than to subject him to the more certain and systematic depredations of foreign tyrants. Deprived of the benefits of the English laws, as well as of the laws of nations, which we are falsely taught to believe in this country they generally enjoy, what encouragement have the natives of India to come under the English yoke, or the princes to remain faithful to the engagements they may have formed? The world should be informed whether a system so atrocious be the offspring of your own brain, or begot by the Court of Directors or Board of Controul. At all events it is necessary to the honour of this country, that the monster should be solemnly and formally disavowed by the government of the parent state.

'There are two points more on which I shall touch in this letter. The first respects the use you have thought proper to make of your council. Their names can no more avail you in my case than the approbation of the Court of Directors of your edict

respecting the press. It is well known, and I shall have no difficulty in proving it, that you unceremoniously dispensed with the authority of your council as often as you thought proper or convenient. In some considerable state transactions you even never consulted them. Their names being so regularly employed in my case is therefore only an additional proof that you felt your conduct could not stand upon its own merits. It is of little importance to enquire whether the members of your council were equally disposed with yourself to attack the personal freedom of the subject, and the liberty of the press, and whether they held the principles of the British constitution in equal contempt, or only granted their sanction to your measures from a culpable complaisance, as the discovery would in no respect alter the state of facts. I therefore only advert to this in passing, that I may have an opportunity of remarking on the lamentable inefficiency, for *good purposes*, that exists in the present organization of the Bengal government. In the first place, the Governor General may act contrary to the opinion of his council, if they should be unanimous against him. In the next place, *the commander in chief of the forces* is the second member of the *civil* government of a country containing fifty (now nearer fixty) millions of inhabitants. The other counsellors, two in number, are generally taken from the Company's senior servants, of whom it can be no disparagement to say that, deeply con-

versant as they may be with the principles and practice of commerce, they cannot be supposed to have had sufficient experience of the principles of the British constitution, or of the laws of nations, for rightly discharging the functions of such important offices; and in proof I need only refer the reader to the facts contained in the preceding pages. But besides the *description*, the *number* of those who compose the government of such a mighty empire, even if the power were more equally divided, would seem extremely disproportionate. Their number is now four. In the time of Mr. Hastings, they consisted, I think, of seven, when the extent of territory was not near so considerable. I do not believe that the disputes which then existed in the councils of Bengal tended either to diminish the vigour or justice of the government; and I hold it just as pernicious a doctrine to restore them to harmony by a reduction of their numbers, as to curtail the liberty of the press, in order to destroy its licentiousness. If we wish for precedents, the Dutch East India councils, when Holland was a free nation, were composed of many members, although their territories were, comparatively, of very trifling extent. In 1793, while Holland yet enjoyed some degree of freedom, three commissioners were sent out to examine into all the abuses of their different governments in India. The example seems worthy of imitation. These are points so obvious that it appears to me no man of an unsophisticated

mind, who has not a strong predilection for tyranny, will controvert them. At all events, it appears that in the present state of Asiatic affairs, while individuals are entrusted with such inordinate power, it is essential to the interests of the parent state that a frequent sweep should be made of the councils, as well as the Governors, of India.

I have heard it urged as an objection to your accusers that your administration is well spoken of by some of those who have returned from India. But the premises may be very true without the consequences attempted to be deduced from them being at all just. If, however, such testimony could possibly be divested of the suspicion of partiality, what would avail the weight of mere opinion against the evidence of facts? Those who approve of such conduct as I have depicted must be either of the same arbitrary disposition with yourself, and speak from sympathy, or they have not attended to the subject and speak at random, or they are your mere creatures. Many of those, indeed, who have returned from India with fortunes for the last years, must be persons, whom you have promoted, or served, or *might* have ruined; and, in either case, they owe you obligations. It is therefore quite natural that they should express them. If we consider, indeed, that the affairs of fifty millions of Asiatic inhabitants have been administered by a few thousand Europeans, under your Lordship's patronage, for seven years, it would be surprising, if a

considerable proportion of these Europeans did not, from those feelings of interest and dependence common to men, have some leaning of partiality towards you. To this reasoning, as derived from the most prominent principles of human nature, I would advise the people of this country, in forming their judgment of your conduct, strictly to attend. Even with these powerful sentiments, operating in your favour in the breasts of Anglo-Asiatics, I will venture to affirm, that, if polled, a great majority of them would decide against you; while if they were unanimous in your praise, opinion, as I have said, can avail nothing against the testimony of facts. The gentlemen of the Madras and Bombay establishments, who may be supposed better, as being less biassed judges of your conduct, than those of Bengal, do not, as far as I can learn, speak in high terms of the merits of your administration, or admire the system, which you have carried to such perfection, of deposing Nabobs, which they even seem to think may be converted into a lucrative trade.

LETTER XXX.

To the Marquis Wellesley, &c.

Comparison of his measures with those of Bonaparte, and of all the factions who have succeeded each other in France during the revolution.

——— I, demens, et sævas curre per alpes,
Ut pueri placeas, et declamatio fias.

Juv. Sat. x. v. 165.

My Lord,

The possession of unlimited power, under similar circumstances, will always produce similar effects on the ambitious mind. The factions that have succeeded each other during the French revolution, the usurper who has supplanted them, and you, my Lord, in the eastern world, have all displayed a similar eagerness to establish despotism at home, and, like so many modern Alexanders, a boundless rage for foreign conquest.

Unus pellæo juveni non sufficit orbis,
Æstuat infelix angusto limite mundi.

But none of you, excepting the Macedonian madman, could have given full swing to your unbridled desires, until you had first muzzled that implacable enemy to injustice,—that appropriate scourge of human wickedness,—the press. Alexander, indeed, had no free press to muzzle, and consequently not

much freedom of any kind to destroy. He must therefore be acquitted in part of the atrocities so deliberately committed by his imitators in conquest. It remained for modern vandalism to adopt methodical plans—DIGESTED SYSTEMS—for replunging the world into darkness and barbarism. But my business is at present more especially with your Lordship.

The extraordinary restrictions laid upon the press in India are not alone worthy to be considered as they are a violation of the British Constitution. They also deserve our most serious attention as their immediate effect is to re establish despotism and increase ignorance throughout Asia; as they deprive the inhabitants of India of authentic information respecting the state of Europe, and the inhabitants of Europe of authentic information respecting the state of India; and finally as they concur with the impious views of Bonaparte, of establishing despotism, ignorance, and barbarism, over the face of the earth. It seems, indeed, as if there had been a certain emulation between you; and truly you have both been wonderfully successful. Could you have shook hands across the Isthmus of Suez, what congratulations might have passed on the conclusive results of your respective atchievements! The one had conquered the liberty of the press in France, and almost in Europe; the other had extinguished it in Asia. (The annihilation of personal and every other freedom follows of course.) You might in future banish, imprison, or even behead, without

any one daring to communicate the tidings to the public. You might render the *fortunate* and *great* people, over whose destinies you presided, as ignorant as your hearts could wish or your purposes require. You might assume an active and positive, as well as a negative, controul over the press.

Eulogiums upon your upright administration, benevolence, wisdom, integrity, and knowledge, being thus gravely and pompously transmitted to other nations, by your own pure vehicles of intelligence, how would the multitude gape and marvel at the prodigious talents of such mighty men!—Is it any wonder that this horrid system should produce the most deleterious effects upon your own minds?—The extravagant adulations of the French and Asiatic presses remind me of a powerful man of antiquity, who did not even find the incense too strong, when one of his parasites told him that the very turbot on his table had longed for the honour of being caught for his use: *Ipse capi voluit.* On which Juvenal makes a remark unfortunately not less applicable to modern than it was to ancient times:

——— Nihil est, quod credere de se
Non possit, cum laudatur dis æqua potestas.

Sat. iv. v. 70.

Without meaning you a compliment, I do think, my Lord, that you are not unworthy of being compared with Bonaparte. Although a trite, it is here a very apposite remark, that extremes meet. I will not be so unmannerly as to apply to a man of your

rank the adage: *stulti dum fugiunt vitia in contraria currunt.* But it has so happened that although Bonaparte in his revolutionary, and you in your anti-revolutionary rage, have been travelling in opposite directions, you have at length met on the very summit of despotism.

Your apeing of royalty when you caused a throne to be erected at Madras, for the purpose of receiving the Ambassadors of the native princes, will not readily be forgotten by the officers of the coast, who are not so much accustomed to pomp, and shew, as those of Bengal, and despise effeminate and vainglorious parade. Such profusion as was practised on that occasion was never witnessed in India. When you meditated an excursion to Seringapatam, and determined to astonish the natives by bringing the Governor and Council of Fort St. George in your train; when the road from Madras to Vellore was lined with troops for the splendid occasion, and thousands of Paccalies * were daily employed to water the roads, you must have been truly in your element. What a pity that the delusion could not continue for ever! What a contrast with your silent and unnoticed landing in England! Can any thing more resemble these proceedings than the processions of Bonaparte and Josephine through the degraded provinces of France, when the roads were watered and strewed with roses for their reception? Power has such similar intoxicating effects upon vain minds, that it would be difficult to say to

* Water-carriers, with horses and leather bags.

which of you the following pompous communication belonged: "As a mark of *my favourable acceptance* of your services, I have this day appointed you to be *one of my honorary Aides-de-Camp*; a *distinction* which I have reserved for such officers as have proved highly meritorious in the field, or in the conduct of negociations with foreign states." Upon reading this to a friend, he asked me if it was not a translation from the *Moniteur*.

When we consider these events, not merely as causes of regret to the world, but as matter of curious speculation, we are forced to acknowledge that our surprise and indignation are less powerfully excited by the despotism of a man educated in France, and inured to the discipline of armies, than by that of a man educated in Great Britain, and issuing from the very bosom of the British Senate. In grapling with the doctrines of Brissot, by which you mounted to the government of India, I fear, my Lord, you insensibly became a zealot, and lost sight of that decency, which is due to the feelings of mankind. Even Bonaparte, while imposing shackles on the press of France, as strong as those which you have imposed on that of Asia, deemed it too scandalous, by regulations duly transmitted to his Secretaries, to make an open avowal of his profligate tyranny. In not adding insult to injury, there is a merit, although of the negative kind.

It will be matter for the serious consideration of the people of this country, whether, if you are suffered to escape the punishment of your crimes, the next step will not be to procure you a seat in the Cabinet; and if that unfortunate event should ever happen, I confess I, for one, should begin in earnest to despair of my country. Let us for a moment consider the prospect. In the first place, what concord could subsist between you and those members of the administration, whose recorded opinions, if any faith can be placed in man, are so diametrically opposite? How could Mr. Fox, Mr. Sheridan, Lord Howick, or Lord Erskine, ever act with a man who has utterly extinguished in Asia that liberty of the press, for which they have nobly fought so many battles in Europe? How could the chancellor of the Exchequer, without suppressing the amiable ingenuousness of youth, and forgetting all the wise doctrines of his venerable father, mix his councils with so impure a stream? How could that independent and most respectable member of parliament, Mr. Whitbread, the formidable enemy of delinquency, vote in unison with a man under the imputation of such serious offences against the state? How could Mr. Wilberforce, and those independent members of parliament, who conscientiously act with him, as the steady supporters of our constitutional liberties, bear to behold a man in the councils of the nation, who has most shamefully violated every principle of freedom, and reduced the

inhabitants of Asia as nearly as possible to the condition of African slaves? How could Grenville, Windham and Minto, the sage and successful champions of our national independence abroad, ever sanction domestic principles of government, which, if not equally odious with, would in the end infallibly lead to foreign subjugation?

These, however, are comparatively trifling dangers. What security should we have, or at least what confidence could we feel, that a person of precisely the same despotic principles with Bonaparte, a person who has introduced banishment and slavery into India on the very same footing that Bonaparte has introduced them into France, would not combine with him for the destruction of our freedom? It is at least exceedingly natural that a man who hates freedom should endeavour to destroy it —that a man who has given the most unequivocal proofs of attachment to arbitrary principles, should rather wear gilded chains under the sway of a brother despot, than remain subject to the rude and unmannerly animadversions of a free press. The liberty of the press, it should never be forgotten, is the most powerful and the sole efficient friend of freedom, as it is the most powerful and the sole efficient enemy of despotism. It is therefore naturally detested of tyrants: for "while virtue is an "enemy to Pygmalion, Pygmalion will be an ene-"my to virtue."

But it was not alone the liberty of the press in India that was obnoxious to your Lordship. Did you not even endeavour to suppress the circulation of newspapers from Europe, and with that view cause official notification to be made to certain officers of Indiamen at Saugar Roads? Could any thing be more precisely in unison with the measures of Bonaparte, when he prohibited the introduction of English newspapers into France? And were not your motives precisely the same, namely to prevent the people under your respective governments from perusing unmannerly strictures on your conduct?

We are even informed that a notice to the following effect was struck out of the proof sheet of an Asiatic newspaper, by superior order, although the truth of it was confirmed by Lord Valentia:—

"By letters from Mocha, of the 28th of August
"last, we learn, that Seid Mahomed Akil had just
"arrived with the *Pigeon* of Bombay, which he had
"purchased at the Isle of France, loaded with lead,
"iron, sugar, &c. This is a new vent for the
"plunder of the enemy, and furnishes a new proof,
"if any were wanting, of the rapidly increasing
"spirit and extent of the commerce of the Arabs.
"We understand, that to the above, and several
"other fine ships, purchased by them at the isle of
"France, they have lately added the *Upton Castle*
"of this port." What might have been the evil tendency of this paragraph, seems very difficult for common penetration to discover; and I should be

curious to hear your Secretary explain the moral or political danger that could result from its insertion. From this example we may judge of the manner in which the office of Licencer of the Press is executed in India: *ab uno disce omnes.*

Now, my Lord, I must reluctantly observe, that although you have the merit of setting the example to Bonaparte of annihilating the personal freedom of the subject, and extinguishing the liberty of the press, that you are both, in this respect, nothing more than mere imitators of those atrocious men, who succeeded each other in power and in crimes, during the terrible period of the French revolution. Nor is it any praise of you and Bonaparte that you did not imitate Marat, Carrier, Robespierre, and Fouché, in those wholesale massacres, which they perpetrated, from the mere wantonness of tyranny, and the absence of every moral restraint. By moral restraint, I mean publicity; and especially that species of publicity, which depends upon the liberty of the press. What but the absence of this Controul could have enabled those monsters to carry their atrocious purposes into execution? The very first measure of every victorious faction was to denounce, as a crime *against the State,* every thing that was not written *in their sense.*

By silencing the press, they were enabled not only to suppress all knowledge of their enormities, but to give for a moment even a colour of virtue to their crimes. Was not this the very course, with

certain necessary limitations, adopted by you in India, and by Bonaparte in Europe? Did you not both go as far in the path of tyranny as you durst? When Bonaparte usurped the supreme power in France, wholesale guillotining was indeed out of fashion; but imprisonment, banishment, transportation, assassination, and as is said, private torture, were freely applied to use. Yet there were men foolish enough to give credit to Bonaparte for not being so cruel as his predecessors, when that species of cruelty which they exercised was out of fashion, and he could not have been so without the certainty of immediate destruction. The usurper, however, being freed from the most powerful of all moral restraints, was enabled to indulge his criminal propensities almost to the utmost extent of his wishes. Not satisfied with extinguishing all liberty of the press in France, he has converted it into a terrible engine of falsehood, to delude and to demoralize the world.

It is to this unfortunate state of the French Press, this nefarious suppression of truth and intrepidity of falsehood, from almost the commencement of the revolution to the present moment, that we owe all the calamities of France as well as of Europe; that many worthy men in all nations have been imposed upon, and still continue to a certain degree to be imposed upon, respecting the character and views of the French Government, by incessant torrents of the most audacious lies; that, groundless animosi-

ties, jealousies, and divisions, are successfully sown between states, whose inclinations and interests would lead them to permanent amity and concert; and that the disorganization and demoralisation of Europe proceed with such gigantic strides;—"Better, ten thousand times better," says the eloquent recorder of Bombay, "would it be that "every press in the world were burnt, that the very "use of letters were abolished, that we were re-"turned to the honest ignorance of the rudest "times—than that the results of civilization should "be made subservient to the purposes of barbarism "—than that literature should be employed to "teach a tolleration for cruelty, to weaken moral "hatred for guilt, to deprave and brutalize the "human mind."

I know that in what I am stating at present there is nothing new. But, when we still see the rumours fabricated at the Thulleries gravely copied in the English Journals, as articles of intelligence, and sometimes even without stating accurately the polluted channel from which they are taken, it is impossible not to think that we are not yet sufficiently on our guard against the most fertile volcano of public deception, and human evil, that ever appeared in the world.

With respect to you, my Lord, I will not for one give you any credit for not rivalling Bonaparte in all his iniquities. If you had been so inclined, the dispositions and habits of British subjects would

not have suffered you to proceed much farther than I myself knew you to have gone. If you had thought it expedient to order private strangulation, poisoning, or beheading, you could not have got a man base or dastardly enough to have executed your orders. If you had attempted, like Bonaparte, to assume a positive, as well as a negative, controul over the press, you would not have found a British Editor servile enough to insert your lucubrations. But to do you justice, my Lord, you have advanced as far and as rapidly in the road of despotism, as you could consistently with your immediate safety have done; and infinitely farther than any man in England has the right to do.

LETTER XXXI.

To the Marquis Wellesley, &c.

On the difficulties of reaching Asiatic delinquencies.

"Impunitas peccandi maxima illecebra." *Seneca.*

My Lord,

In all ages of the world, men in power have committed injustice with the less repugnance, on account of the difficulty of conviction and punishment. The oppressor being the strongest, the oppressed generally prefers submitting quietly to one injury to the risk of suffering many. Either party may die *, or when a sea voyage is in question, be captured by the enemy, or drowned, or cast away. The chances of impunity are, in fact, numerous. The aggrieved party may labour under an ignorance of the laws and constitution of his country, a want of confidence, of resolution, or perseverance, or too great a facility of disposition; his resentments may be evanescent, his indolence predominant, or his sense of public duty dull; his papers may be lost, or his evidence imperfect; or finally, some circumstance of prudence or of policy may induce him to submit in silence to his fate.—Your calculation of chances, in my case, my Lord, may have

* At the period of my expulsion from India, I was actually in a very bad state of health, and the chances of life and death seemed very equally balanced.

been rather too sanguine. Trusting to one or all of these casualties, you did not perhaps expect that I should ever rise up in evidence against you in Europe. But Providence, which presides over the destinies of man, has been pleased to order otherwise; and neither the length of your purse or the influence of your connections shall deter me from renewing and continuing the contest, in that full confidence of success, which is inspired by a good cause, and an impartial tribunal.

If we peruse with attention the modern history of Great Britain, we shall find that this principle of impunity is peculiarly applicable to the delinquencies committed in our Asiatic provinces. It is an enormous and growing evil, to which a strong, an efficient, and speedy remedy, must be applied; otherwise I do not hesitate to predict that, *in a very few years*, every sentiment that is valuable in this nation will be destroyed. When the question is whether enormous delinquency is to be punished, or our Constitution to be undermined and to perish, are we to be prevented by any circumstances of time, of distance, of inconveniency, or of expence, from entering into enquiries? If it should be necessary that every member of the Councils, every Secretary to the governments, every servant of the Company, in India, should be sent for and brought home to give evidence at the Bar of the House of Commons; if it should be necessary to print every document relating to Asia-

tic affairs, even to the amount of a hundred thousand volumes, is this expence, this inconvenience, and this labour to be avoided, and delinquency to remain eternally unpunished? Since the time of Mr. Hastings, the influence of Asia on Britan has increased, in a ten-fold degree, the importance of enquiry. Indeed to such a degree has this importance arisen, that unless immediate measures for an extensive and general enquiry be adopted, Britain will, in a short, a very short time, be nothing more than a back-shop, or at most a mere counting-house of her own Asiatic possessions; and we should then indeed merit the French reproach of *une nation boutiquiere.*

The difficulties of enquiry on the subject of Asiatic delinquency, are no new matter of complaint; "whatever encomiums have been passed on the "judicial provisions of the British Constitution, "certain it is that they have notoriously failed in "the attempt to apply them to persons returning "from India. The parliamentary prosecution of "Lord Clive, by General Burgoyne, was easily "defeated. The verdict of the Court of King's "Bench against the persons, who had imprisoned "and occasioned the death of Lord Pigot, was such "as to be considered by the persons condemned "rather an object of merriment than a source of "calamity. The bill of pains and penalties, which "was introduced into parliament by Mr. Dundas

" in 1782, was found to be unfit for the purposes " it had in view, and was given up by its author."

It is worth while to enquire how far these difficulties depend upon the nature of the subject, and how far upon less creditable circumstances. It will be recollected, that, in the case of Mr. Hastings, the ministry for a long time defended him, and, until the public opinion rendered it expedient for them to alter their conduct, threw every obstacle in the way of the prosecution. On that memorable occasion, Mr. Fox, justly indignant at the repeated refusal of certain papers, which had been moved for in various forms, exclaimed: "What a precious " farce is daily acting within these walls. We see " the friends of Mr. Hastings affecting to be eager " that every paper which is called for should be " granted. We see the King's Ministers rising to " declare that nothing, which can properly be " granted, shall on any account be refused. We " hear other Gentlemen, who call themselves inde- " pendent men, saying: By all means let the House " know the whole, and be put in possession of " every species of information. And yet we see " the same men, all of them dividing together, to " enforce a negative upon a motion for the most " essential information, helping each other out with " hints and whispers during the debate, and pointing " to matters apposite to the argument on their side " of the question, just as I and my Right Hon " Friend would assist each other, when we are

" maintaining the same point, and arguing for the " same purpose." Mr. Fox, in another place, expresses his opinions with great energy and truth: " In a word, by such a conduct as that which was " now held (refusing papers) the Board of Controul " and the House of Commons would become an- " swerable for having suffered the servants of the " East India Company to believe, that they were " secure from enquiry, and out of the reach of pu- " nishment. What was the tendency of the last " vote but to put it in the power of the minister to " interfere in every investigation, and by his single " *veto* to defeat the aim of that House in the exer- " cise of its first, great, constitutional character, that " of the grand inquest of the nation? Armed with " such a power, to what lengths might not a minister " proceed? Every criminal, however notorious his " delinquencies, however numerous his crimes, " however injurious to the national honour, would " only have *to secure the protection of the treasury* " to be able to laugh at accusation, and set con- " viction at defiance."

Under all these delays, " Mr. Burke complained of " the difficulties of keeping his witnesses together, " some of whom were ill, and could not remain in " town without endangering their lives. What he " had heard led him to fear that it was intended to " quash the prosecution; for it was evident, from " the language of Mr. Jenkinson, that one half of " his accusations were gone already. It was ſtruck

" with the dead palsy, and was to live no longer.
" He considered one arm of the business as lopped
" away ; but, if he lost a leg, he would still perse-
" vere, and even, if reduced to the necessity, would
" fight like Witherington upon his stumps."

Mr. Fox, in describing the difficulties Mr. Burke had experienced in his progress to that stage of the business, said " that no man of inferior abilities " would have surmounted them. As soon as he " had brought forward the business in one shape; it " was stated by the other side of the house that the " form of proceeding was wrong, and that another " must be adopted. Still new modes were pro-" posed, new delays invented, new artifices played " off to confound, impede and embarrass ; but the " house and the public must see through the " whole."

How far, in this respect, there is any similarity between your case and that of Mr. Hastings, the public will hereafter be better able to judge. In other respects there is certainly very little. And first as to their merits: during the administration of Mr. Hastings it was very difficult under the best management, to save India ; while, during that of your Lordship, it would have been very difficult, under the worst management, to have lost it. The charges against Mr. Haſtings were brought forward by a body of men formidable from number and from talents, and, like artillery of large calibre, capable of battering down every thing that opposed them

while those against you are brought forward by individuals, not only not supported by party, but even liable to be thwarted in every stage of their progress. But if there be this vast disproportion between the attacking powers, it is more than counterbalanced, by the difference in the apparent criminalty of the parties. The crimes imputed to Mr. Hastings were, in a legal and constitutional view, at least, dubious, whilst yours, my Lord, if my propositions be established, fill up such an immensity of space, that the most random shot cannot fail of hitting them. If every one of the twenty two articles of charge brought against Mr. Hastings had been fully proved, they would not have formed a crime of such enormous magnitude against the constitution of this country as that single one of having extinguished the liberty of the press, in a portion of the British empire containing fifty millions of inhabitants.

The disrepute into which, since the proceedings against Mr. Hastings, the trial by impeachment has unjustly fallen, has happily for the nation been obliterated by the celerity of the proceedings against Lord Melville. This effect I cannot better describe than in the words of the Speaker of the House of Commons, in giving the thanks of that house to the managers for the impeachment:—"Gentlemen.—"This House has, upon the result of a great and "important enquiry respecting the administration "of the expenditure of the public money, come to

" a resolution to enter upon the most grave and so-
" lemn of all its functions, and resort to its prero-
" gative of impeachment against Henry Lord Vis-
" count Melville. It is the power of impeachment
" which has enabled the Commons of this country,
" at all times, to lay open the misdeeds of the high-
" est servants of the crown, and to prevent, or pu-
" nish, all inroads which may be made upon the li-
" berty of the subjects of this realm. In the pro-
" secution of this impeachment, the House has ap-
" pointed you to prepare and arrange the proofs
" of the complicated transactions on which their
" charges were grounded. Their charges were
" against a noble person, whose rank and high con-
" sideration in the State must hold him forth as a
" signal example either of good or of evil. Through-
" out the progress of the trial, they have witnessed,
" with peculiar satisfaction, your great attention and
" dispatch, which have rescued the trial by impeach-
" ment from the disgrace into which it had fallen,
" and restored it to its former strength and honour.
" They have witnessed in you an unwearied dili-
" gence in the discharge of the trust committed to
" you, a singular sagacity in discovering the proofs,
" a boldness which so properly belongs to the Com-
" mons of the united kingdom, a strength of argu-
" ment, and a power of eloquence, which threw the
" light of day upon dark, secret, and criminal
" transactions. The final issue of this trial now
" remains for another body. It is before one of

" the highest of human tribunals; it is the House
" of Lords which is to determine ultimately for
" the condemnation or acquittal of the person ac-
" cused. Be the final issue what it may, you have
" done your duty. You have satisfied the expec-
" tations that the House had formed of you, and
" you have deserved their approbation and their
" thanks. I am ordered by the House to com-
" municate to you the approbation and thanks of
" the House for the faithful management of the
" trust reposed in you."

It is true that the system adopted for the government of our Asiatic territories is in itself completely and fundamentally erroneous, and that nothing but a total change of that system can effect a radical reform of the political evils, which afflict India, and, through it, Great Britain. But this alone is not sufficient. It is also necessary that those servants of the State, who act improperly under any system, should suffer the punishment they merit. For if, on account of the difficulty of prosecution, we admit the certainty of impunity, it will require much more than the ordinary degree of political integrity not to act badly under every system, when such enormous temptations, as those which are created by unlimited power in India, are thrown in the way of an ambitious mind.

The difficulty of prosecuting great criminals, however, it must be evident can only arise from

the undue protection, which the very consequences of their crimes, or the influence of their connections may enable them to obtain; and this very prospect forms a great incitement to crimes. *Tanta in muneribus fiducia.* But, if the people wish the Constitution to be transmitted unimpaired to their posterity, they will express their loud and universal disapprobation of all attempts to stifle enquiry, direct or indirect, from whatever quarter they may proceed. I have already mentioned the attempts that were made in the case of Mr. Hastings. Those which were more recently made in the case of Lord Melville are in the recollection of every one, and also how nearly they had succeeded. On that memorable occasion, the present Chancellor of the Exchequer concluded a very impressive speech, in terms well calculated to produce a conviction of his political integrity. "If the motion of the right honorable gentleman (Mr. "Pitt) took place, it was a vain toil, a fruitless "labour, to follow up the question further; in "that case, not only would a Treasurer of the "Navy be found to be violating an act of parlia-"ment for upwards of fourteen years, but also "would be found a House of Commons who would "suffer those charges to lie on their table, only "anxious how they might avoid such an investi-"gation, and, after all this trouble, a power should "step in between the criminal and the law."

Indeed when we consider the reforms that are made and projecting in every department, under the present administration, and their declared hostility to every species of rapacity, peculation, and oppression, we have a sure guarantee that no ministerial attempt will be made to prevent a full and impartial investigation into your conduct, my Lord, or into that of any other Governor, against whom well founded accusations may be brought. The consequences to be expected from adopting and inviolably adhering to these principles of reform have been well described by the Chancellor of the Exchequer, in his excellent speech at the opening of the budget: "If the people did feel cheerful in "the present crisis, when, from the failure of other "modes of assistance, we were left to rest on our "own means and strength; if they were firmly and "unanimously determined to carry on the present "contest with spirit, until war became no longer "necessary, and until every thing valuable to man "was secured to them, he must attribute that cheer-"fulness, and that determination, to the confidence "they entertained that the resources and revenues "of the state would be applied œconomically. He "believed that such a feeling of confidence did ex-"ist in the country, and certainly if ever men were "committed to abide by their principles they were "the present administration, who, should they be "induced to depart from the system which it was "their duty to pursue, must retire loaded with

" shame and disgrace. This, however, he trusted,
" would be far from the case. The labours of the
" commissioners of naval inquiry, from which the
" public had already derived so much advantage,
" and the labours of the commissioners of military in-
" quiry, recently instituted, who, he trusted, would
" emulate the diligence and patriotism of the for-
" mer, must afford to the administration abundant
" opportunities of shewing their vigilant attention
" to the proper administration of the public purse.
" When he stated that ministers were in the highest
" degree desirous of following the suggestions of
" those boards, and when he stated that in his de-
" partment steps had been already taken to prose-
" cute for, and recover, the sums lost to the pub-
" lic in the West Indies, and to remedy the abuses
" in that country, which had been allowed to re-
" main a perennial source of fraud, rapine, and
" misapplication of the public money: when he
" made these statements, he was aware that he on-
" ly stated that ministers felt their duty, and were
" resolved to perform it."

I have indeed heard it frequently observed, with respect to parliamentary investigations, how very much their fate depends upon the state of parties for the time being, and how very little upon the intrinsic merits of the case. I have heard it alleged that the affairs of a semi-barbarous Asiatic Rajah, or a mere question of commercial monopoly, is capable of exciting more interest, among the guar-

dians of our public rights, than the most marked oppression, persecution, or ruin, of a British born subject, or the most vital stabs given, through him, to the principles of our constitutional liberties. I have heard it said, that, if, on the score of private friendships, men in the ostensible situation of ministers were strenuously to defend the conduct of any person accused, before the documents on which the charges against him were intended to be founded were laid before parliament, or were, on the plea of policy, to oppose or to delay the production of them, it would be a very arduous task, if not an impossibility, to bring a delinquent so situated to punishment. But for my part, I cannot believe one word of these allegations, as applied to the members of the present administration, in their connection with your Lordship. I cannot for a moment believe, that the very men, who so justly blamed one administration for endeavouring to screen Mr. Hastings, and another for endeavouring to screen Lord Melville, from investigation, would be the first to commit the same error; thus raising in the minds of the people a dangerous suspicion, that they cannot with safety place their confidence any where. Neither can I, without the evidence of facts, believe that those respectable bodies of men, who on a recent occasion applauded in public addresses the prosecution of delinquency, were actuated only by personal or party feelings, or that they will not equally support and applaud the prosecution of delinquency,

to whatever individual, or to whatever party the imputation may attach.

There may be cases, I admit, in which the situation of a minister is very delicate, when the question relates to a particular friend. The matter, however, seems to my simple perception, sufficiently clear. The paramount duty of a member of parliament is to protect the rights of the people, and to investigate the conduct of those accused of violating them. When the feelings of friendship come in competition with the sentiments of duty, the most that can be fairly admitted is silence. In parliament, the public cannot possibly separate the minister from the man; and they will not easily believe that while he professes to speak only in the one capacity, his influence is not operating in the other.

The acquittal of Mr. Hastings and of Lord Melville can nowise affect the justice of this reasoning. The Lords have pronounced those decisions; and we are bound to receive them. But the Commons also pronounced that there was ground of impeachment; and we are equally bound to respect their authority. I therefore conclude that you, my Lord, whose alleged crimes exceed, in my opinion twenty times those imputed to Mr. Hastings or to Lord Melville, cannot escape impeachment by the Commons, without an inconsistency, I will even say a criminality, of conduct, which appears almost impossible to suppose, on the part of the representa-

tives of the nation. You may, to be sure, escape, by something like a miracle, through the Lords: and, whatever may be our opinion, it will be our duty, if even with sorrow, to acquiesce in the verdict. But under indiscriminate acquittal, if such were possible, it argues great ignorance of human nature to believe that inquiry and impeachment do not tend powerfully to the prevention of crimes.

LETTER XXXII.

To the Marquis Wellesley, &c.

On the necessity of vigilance on the part of the public.

Quis custodiet custodes ipsos?

My Lord,

Notwithstanding the guarantee we have in the principles of the present administration, that abuses will be abolished and delinquencies prosecuted, prudence requires that there should be no relaxation of vigilance on the part of the public, to the conduct of the legislature, in respect to delinquencies in general, but especially in respect to the gigantic and overwhelming delinquencies of the east. With all due respect for these bodies, I must be allowed to say that they cannot be the worse for frequently hearing, and being actuated by, the sentiments of the people,

as conveyed through the medium of the press. This vigilance, and this expression of sentiment, are what we have an undoubted right, and what it is our bounden duty, to exercise; *Quis custodiet custodes ipsos* is a question that it behoves every community frequently to put, respecting the administrators of their public affairs, and it is a question which may be solved in eight words:—*the exercise of the liberty of the press*, that liberty which you, my Lord, have taken such pains to destroy.

The bold, and seasonable, but constitutional, exercise of this liberty deters from crime, brings delinquency to light, and may even confirm the vacillating integrity of a legislature. We remember at the commencement of the proceedings against your Lordship, how much obloquy was attempted to be thrown out of doors on the conduct of the House of Commons, and that the reproaches which were then made, however unmerited, appeared to have had the effect of somewhat increasing circumspection within. But the public I fear were led by these calumnious reports into injurious, although not very unreasonable, inferences, respecting the fidelity of their representatives. Indeed when we consider the unequivocal purity, virtue, disinterestedness, patriotism, and impartiality of that august body, it is impossible, upon mere hearsay evidence, to give any credit to the scandalous imputations that were trumpeted

forth, or, in alluding to them, to suppose that they are not imaginary.

If in a society of private gentlemen, one of the party should address them, respecting a criminal accusation, of which they had the right to take cognisance, but, during his speech, a great number of persons should interrupt him, by coughing, talking in private committees, and walking about, would not such conduct be deemed highly indecent, unjust, and unbecoming the character of men or of gentlemen? would it not have very much the appearance of brow-beating, in order to quash enquiry? If lawyers were to start up in the society, to defend, in modest maiden speeches, the conduct of the accused person, professing total disinterestedness of views, declaring that they had no acquaintance with the person in question, even by sight*, and that the accusing party was acting at his peril,—nay, under a dreadful responsibility, would not the public, if they confided in the purity of special pleading, be led to form the most unfavourable ideas of the accuser, or if they did not, to conclude that so extraordinary a mode of proceeding was resorted to solely for purposes of intimidation? But if the unfortunate accusing member should be told by the society: we will not entertain your charges without documents, nor will we allow you documents (although another

* The touch, as a medium of acquaintance, was not specifically disavowed.

member of the society might have had them in his pocket) to found your charges, but we will treat you as a calumniator for having dared to bring such accusations forward; would not the public conceive that it was the decided intention of this society to cover the accused person, and to proclaim, as far as depended upon them, an universal toleration of crimes?

But, as with respect to the House of Commons, such facts must be considered impossible, so must all inferences drawn from them be considered unjust*. That House, as is well known, is composed of two grand and several minor parties. It would certainly be a singular phænomenon in politics to

* The complete and ridiculous defeat of Lord Temple in the House of Commons on Friday redounds highly to the honour of that body, and will no doubt be hailed as ominous of final justice by the public. In the debate on this occasion, the Master of the Rolls pathetically lamented the hardship under which the unfortunate Marquis laboured by not being brought to an immediate trial, which, in the present stage of the proceedings, would in effect be an immediate acquittal; observing, what is in itself very true, but not in the smallest degree relevant, that the poorest subject is entitled to demand and to have a trial within a limited period. This wise provision was enacted to *prevent*, the enquiry into the conduct of the Marquis Wellesley, which it was attempted to precipitate, is instituted to *punish*, oppression. The learned and worthy gentleman's sensitive fibres, it is to be hoped, do not vibrate responsive to the imaginary hardships of the Marquis Wellesley alone. If he has any bowels of compassion for the *real* hardships of dethronement, imprisonment, banishment and persecution, which this noble Marquis, in the plenitude of his power, was pleased to inflict upon others; if he has any feeling for the sullied dignity and honour of the nation, he will have numerous opportunities, in the course of the pending enquiry, to call his sympathies into action. Ally Hussein, deposed, imprisoned, committed to the custody of those interested in taking him off, dying, will claim some small portion of his commiseration!

see those parties all vying with each other in receding from popularity, by covering the delinquencies of an individual. If it were possible, however, that such a case could happen, it could not happen more opportunely than while we have the remedy in our own hands. We are fortunately on the eve of a general election. Either the Parliament will be dissolved before the charges against you are decided upon, or it will not. In the former case, the people, if they are true to themselves, will not give a single vote to a candidate, who does not give a specific pledge that he will resist abuses and prosecute delinquencies; in the latter, they will not hereafter give a single vote to any man who resists enquiry, and pronounces you, or any other accused Governor, innocent without investigation. Such are the effectual means by which, when sentiments of duty fail, the people of England have it in their power, once in seven years, to punish their representatives: and they ought not to omit an opportunity which so seldom occurs of exercising this grand constitutional authority.

Accordingly, it will be proper, and you may depend upon it, my Lord, it shall not be neglected, to inform the people of England of those who may best merit their suffrages at the approaching election. The public will also I trust think it necessary to exert themselves particularly in frustrating al the attempts that may be made to inundate parliament with your partisans, lest parties should

MINUTES

OF A

COURT MARTIAL,

HOLDEN ON BOARD HIS MAJESTY'S SHIP

GLADIATOR,

IN

PORTSMOUTH HARBOUR,

On FRIDAY, the 6th Day of MARCH, 1807,

And continued, by Adjournment, till WEDNESDAY, MARCH 11, following,

FOR THE TRIAL OF

CAPT. SIR HOME POPHAM.

INCLUDING

A COMPLETE COPY OF HIS DEFENCE,

TAKEN FROM THE ORIGINAL.

THE SECOND EDITION.

LONDON:

PRINTED FOR MOTTLEY, PORTSMOUTH;

AND PUBLISHED BY LONGMAN, HURST, REES, AND ORME, PATERNOSTER-ROW; HOXLAND, PLYMOUTH; A. ETHERINGTON, CHATHAM; AND G. LEDGER, DOVER.

1807.

COURT MARTIAL.

MINUTES taken at a Court-Martial assembled, on board his Majesty's ship Gladiator, in Portsmouth Harbour, on Friday the 6th day of March, 1807, and continued by adjournment till Wednesday, March 11, following.

MEMBERS OF THE COURT.

ADMIRAL YOUNG, President.

Vice-Admiral Sir E. GOWER
——— S.B. ROWLEY
Rear-Admiral VASHON
——— Sir RICHARD J. STRACHAN, K. B.
Captain GREAVES
——— IRWIN
Vice-Admiral HOLLOWAY
——— STANHOPE
Rear-Adm. Sir I. COFFIN, Bt.
Capt. S. H. LINZEE
—— SCOTT
—— Hon. C. BOYLE.

MOSES GREETHAM, Esq. Judge Advocate.

The Court opened about Eleven o'Clock, and Sir HOME POPHAM, late Captain of his Majesty's ship Diadem, was brought in, and audience admitted.

The order from the Right Honourable Lords Commissioners of the Admiralty to John Cricket, Esq. Marshal of the Admiralty, was then read, desiring him to take Sir Home Popham into his custody, and not to put him to greater inconvenience than necessary, and to attend him to and from the Court Martial, and to take his word of honour for his appearance.

The order to Admiral Young from the Admiralty was then read, which was as follows:—

(Copy.) ADMIRALTY ORDER.

By the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

Whereas, by an order, dated the 29th of July, 1805, Sir Home Popham, then Captain of his Majesty's ship Diadem, was directed to take under his command his Majesty's ships Belliqueux, Raisonable, Diomede, Narcissus, and Leda, the Espoir sloop, and Encounter gun-brig, for the purpose of capturing the enemy's settlements at the Cape of Good Hope, in conjunction with the troops under the command of Major-General Sir David Baird, which settlements were surrendered to the ships and troops aforesaid, in the month of January, 1806: And whereas it appears, by letters from the said Sir Home Popham to our Secretary, dated the 13th and 30th of April following, that with a view to attack the Spanish settlements in the Rio de la Plata, for which he had no direction or authority whatever, he did withdraw from the Cape the whole of the naval force which had been placed under his command for the sole purpose of protecting it; thereby leaving the Cape, which it was his duty to guard, not only exposed to attack and insult, but even without the means of affording protection to the trade of his Majesty's subjects, or of taking possession of any ships of the enemy, which might have put into any of the bays or harbours of the Cape or parts adjacent; all which he the said Sir Home Popham did notwithstanding that he had received previous information of detachments of the enemy's ships being at sea, and in the neighbourhood of the Cape; and notwithstanding he had been apprised that a French squadron was expected at

our Secretary, dated the 9th of April, 1806, only four days prior to his departure from the Cape for the Rio de la Plata.

And whereas it appears to us, that a due regard to the good of his Majesty's service imperiously demands that so flagrant a breach of public duty should not pass unpunished: And whereas by our order dated the 28th of July, 1806, Rear Admiral Stirling was directed to send the said Sir Home Popham to England, which he has done accordingly: And whereas Sir Home Popham was on his arrival put under an arrest by our order, and is now at Portsmouth awaiting his trial, we send herewith, for the support of the charge, the following papers, viz.

No. I.—The Copy of an Order from the Lords Commissioners of the Admiralty, to Sir Home Popham, dated the 29th of July, 1805, to take the ships therein named under his command, and to proceed to the Cape of Good Hope, in conjunction with the troops under the orders of Major-General Sir David Baird.

No. II.—The Copy of a Letter from John Barrow, Esq. the Second Secretary of the Admiralty, dated the 2d of August, 1805, signifying the directions of the Lords Commissioners of the Admiralty, to Sir Home Popham, to send a frigate to cruise on the East Coast of South America, to procure intelligence of the enemy's movements, that he might be prepared against any attack.

No. III.—The Copy of a Letter from John Barrow, Esq. the Second Secretary of the Admiralty, dated the 14th of September, 1805, signifying the directions of the Lords Commissioners of the Admiralty to Sir Home Popham, to retain all the transports at the Cape of Good Hope, after the reduction of that settlement, until he shall receive further orders.

No. IV.—The Copy of an Order from the Lords Commis-

the 24th of September, 1805, to co-operate with Major-General Sir David Baird, in the execution of his Majesty's commands respecting the sending off reinforcements of troops from the Cape of Good Hope to the settlements in India, and in the event of its being found absolutely necessary to forward to India the whole force under the command of Sir D. Baird, to protect it thither in the Diadem, &c.

No. V.—The Copy of an Order from the Lords Commissioners of the Admiralty to Sir Home Popham, dated the 21st of November, 1805, to send home, without delay, under a proper convoy, all the transports which are not wanted for the conveyance of the troops ordered to proceed to the East Indies.

No. VI and VII.—Two Letters from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty, dated the 13th and 28th January, 1806, giving an account of the capture of the Cape of Good Hope.

No. VIII.—A Letter from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty, dated 22d February, 1806, giving an account of the Piedmontese French frigate having been spoken with in the neighbourhood of the Cape.

No. IX.—A Letter from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty, dated 4th March, 1806, giving an account of the Volontaire French frigate, "the forerunner of Admiral Willaumez's squadron," having put into Table Bay, and been taken possession of.

No. X. and XI.—Two Letters from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty, dated 12th March, 1806, on the possibility of being attacked by the enemy at the Cape.

No. XII. and XIII.—Two Letters from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty,

No. XIV.—A Letter from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty, dated the 9th April, 1806, informing the Lords Commissioners of the Admiralty, that the intelligence received by La Volontaire appeared "materially to incline to the supposition "that the West Indies was the destination of Admiral "Willaumēz's fleet; but that General Auker, the late "Governor of Tranquebar, just arrived, on his passage "to Europe, had informed him that a French squadron "was expected at the Mauritius."

No. XV.—A Letter from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty, dated 13th April, 1806, informing the Lords Commissioners of the Admiralty, that, "on the 10th, he had received some intelli-"gence respecting the weak state of defence of Monte "Video and Buenos Ayres, which so fully corroborated "what he had already received from various quarters, "that he had suggested to Sir D. Baird the expediency "of sparing a few troops, for a short time, to bring a "question of such importance to an immediate issue." Also inclosing the Copy of a Letter, dated 13th April, 1806, which he had written to the Governor of St. Helena, requesting him to spare some artillery-men to accompany the expedition; and the copy of a letter to him (Sir Home Popham) from Mr. Waine, the Master and Owner of an American ship called the Elizabeth, dated the 28th March, 1806, respecting the strength of Monte Video and Buenos Ayres.

No. XVI.—A Letter from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty, dated 30th April, 1806, giving an account of his having sailed from the Cape on the 13th April, and inclosing the Copies of Letters which had passed between him and the Gover-

No. XVII.—A Letter from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty; dated the 19th July, 1806, inclosing the Copies of Letters which he had sent to the Cape of Good Hope, requiring the Captains of any of his Majesty's ships which might arrive at that place, to send him reinforcements.

No. XVIII.—A Letter from Sir George Shee, Bart. the Under Secretary of State for the War Department, dated the 20th February, 1807, transmitting attested Copies of two Letters from Major-General Sir David Baird to his Majesty's Principal Secretary of State for the War Department, dated at the Cape of Good Hope, 14th April, and 15th May, 1806, stating the grounds upon which the attack of the settlements on the Rio de la Plata was undertaken, and that the Cape being left destitute of naval force, the French frigate Canoniere, which had anchored in Table Bay, was thereby enabled to effect her escape.

And we do hereby require and direct you forthwith to assemble a Court Martial; which Court (you being the President thereof) is hereby required and directed to enquire into the conduct of, and try the said Captain Sir Home Popham for the offences with which he is charged accordingly.—Given under our hands the 2d March, 1807.

THOS. GRENVILLE,
H. NEALE,
THOS. F. FREMANTLE.

To William Young, Esq. Admiral of the Blue, and second Officer in the command of his Majesty's ships and vessels at Portsmouth and Spithead.

SIR, Admiralty-Office, 2d March, 1807.

MY Lords Commissioners of the Admiralty having ordered that a Court-Martial shall be assembled at Portsmouth, on the 5th instant, for the Trial of Captain Sir Home Popham, for the offences set forth in the said order, and their Lordships deeming it expedient that you should attend upon this occasion, to conduct the prosecution on the part of the Crown; I have received their Lordships' commands to signify their direction to you, to attend the said Court-Martial, and conduct the prosecution accordingly.

I am, SIR,

Your most obedient humble Servant,

To Thomas Jervis, Esq. Counsel for the Affairs of the Admiralty and Navy.

WM. MARSDEN.

SIR, Admiralty-Office, 2d March, 1807.

MY Lords Commissioners of the Admiralty having directed Mr. Jervis, Counsel for the Affairs of the Admiralty and Navy, to conduct the prosecution on the part of the Crown, at the Court-Martial to be held at Portsmouth, the 5th instant, for the Trial of Captain Sir Home Popham; I have their Lordships' commands to signify their direction to you to attend the said trial, and give Mr. Jervis such assistance as he may require upon the occasion.

I am, SIR,

Your most humble Servant,

Charles Bicknell, Esq. WM. MARSDEN.

The Court were then sworn.

No. I.—*Copy of Instructions to* Sir Home Popham, *dated 29th July*, 1805; *with one inclosure.*

(MOST SECRET.)

By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

THE Lord Viscount Castlereagh, one of his Majesty's Principal Secretaries of State, having, with his letter to us of the 25th of July, transmitted a copy of the instructions which, by command of his Majesty, he had furnished to Major-General Sir David Baird, commanding his Majesty's Land Forces on an expedition for attempting the reduction of the Cape of Good Hope, on the subject of which the Major-General has been directed to communicate with you in the most confidential manner, and to concert with you such measures as may be best for his Majesty's service: We transmit to you herewith a Copy of the said Instructions for your information, together with Copies of the Instructions from the Secret Committee of the Court of Directors of the East India Company to the Governor and Council of St. Helena, and also to the Officers commanding their ships, which you will communicate to the said Governor and Council, and to the said Officers, as you shall think it expedient; and we do hereby require and direct you to communicate in the most confidential manner with Major-General Sir David Baird, to furnish him with all the information in your power, and to co-operate with him in the execution of his Majesty's commands: concerting such measures with the Major-General for proceeding against the Cape, in the manner which may be most likely to ensure success.

On your arrival at Madeira, you will take under your command his Majesty's ships named in the margin,* which

* Belliqueux, Raisonable, Diomede, Narcissus, Leda, Fancis

you may expect to find there (and the Captains of which are directed to follow your orders), together with the Transports, Victuallers, and Indiamen; and on leaving this island you will deliver to the several Captains and Commanders such rendezvous, in case of separation, as may be judged most likely to enable you to arrive off the Cape with the whole of your collected force.

Upon the surrender of the settlement to his Majesty's arms, you are to use your utmost diligence, as far as may depend on you, to have the troops and recruits destined for India expeditiously reimbarked, in order that they may proceed under the convoy of the Belliqueux, to their ulterior destination; notifying by them, or by the earliest opportunity which you can find, the surrender of the Cape to the two Commanders in Chief of his Majesty's Naval Forces in the Indian Seas, in order that the accustomed communication with the colony may again be opened. And you are further directed, as soon as the object of the expedition shall be accomplished, to send the Raisonable to St. Helena, with orders to take under her convoy such of the vessels of the East India Company, and others, as may be collected at that island, and proceed with them to Spithead.

In the event of circumstances arising, which may make it expedient to desist from the enterprise, you are nevertheless to detach the India ships to their destination under the convoy of the Belliqueux, and to return with the remainder of your force and transports to St. Helena; and not finding there any fresh instructions, after waiting fifteen days, or longer if it shall be found expedient, you will proceed to Cork with the ships and transports under your convoy, unless you shall receive a different destination at Port Praya at St. Jago, where you are directed to call for further orders; leaving at St. Helena the

her convoy any of the homeward-bound East India ships that may either have arrived there, or be expected to arrive within one month. But in the event of none being there, nor any expected in the above-mentioned period, you are to continue the Raisonable under your command, and proceed as before directed.

Immediately after the surrender of the Cape, or in the event of circumstances arising which may oblige you to desist from the enterprise, you are to dispatch one of the small vessels, which will accompany you, to England, transmitting to our Secretary for our information an account of your proceedings.—Given, &c. 29th July, 1805.

BARHAM,
J. GAMBIER,
PH. PATTON.

Sir Home Popham, Captain of his Majesty's ship Diadem.

By command of their Lordships,
JOHN BARROW.

Inclosure in No. I.—*Copy of Instructions dated 25th July, 1805, to Major-General Sir* DAVID BAIRD, *for proceeding to the Cape of Good Hope.*

(MOST SECRET.)

Downing-street, 25th July, 1805.

SIR,

IN consequence of information having been received that the Cape is now defended by not more than from 1500 to 2000 regular troops, not of the best description, and that the militia and inhabitants look with anxiety for the arrival of a British force; and also from the facility afforded to an operation against that settlement from the troops now embarked and proceeding to India being applicable, without inconvenience, to this service in progress to their ultimate destination, it has been determined on to attempt the reduction of the colony by a combined opera-

I have the satisfaction to acquaint you, that his Majesty has been graciously pleased to select you for the command of this expedition, and that directions have been given to embark with the utmost dispatch the regiments named in the margin,* in transports now laying at Cork, to be employed on this service.

As the troops cantoned in the neighbourhood of Cork have been directed to embark on board transports which are kept constantly in readiness, and victualled for six months, I have every reason to hope that the armament will be in readiness to put to sea in the course of a few days, and the whole naval and military force, when assembled at the Madeiras, will be as follows:

Raisonable - - - -	64
Diadem - - - - -	61
Diomede - - - -	50
Belliqueux - - - -	64
Narcissus - - - -	32
Leda - - - - -	32
24th Foot - - - -	504
38th —— - - - -	925
59th —— - - - -	1000
71st —— - - - -	768
72d —— - - - -	730
83d —— - - - -	750
89th —— - - - -	890
20th Light Dragoons - -	221
Artillery and Artificers - -	320
Recruits - - - -	546

6654 Rank and File.

It is of the utmost importance that the object of this expedition should not transpire; and lest the enemy

* 24th, 38th, 71st, 72d, 83d, and 89th Foot.

should be apprised of your approach; the troops at Cork have been directed to embark, under your command, *for the Mediterranean.*

The India Fleet has been ordered to proceed at once *to India*; both Fleets will sail with these ostensible destinations, but having sealed orders to be opened in a certain latitude, directing them to rendezvous at the Madeiras, where the whole Naval and Military Force (including the Company's ships) will be directed to place themselves under your orders, and those of Sir Home Popham.

It is his Majesty's pleasure, that you delay as short a time as possible at Madeira, and that even there every precaution be taken to prevent the immediate object of the expedition from being made public, which will best be done by giving out that the Cork Fleet is to separate at a certain latitude for the West Indies.

Having departed from the Madeiras, you are to proceed at once to the Cape, unless the Officer in command of his Majesty's ships should think it adviseable to touch at St. Helena; in which case you will use your utmost diligence to obtain the latest and most precise information with respect to the state of the Cape, its garrison, defences, means of subsistence, &c. and you will confer with the Governor of St. Helena (who is directed to render you every aid consistent with the security of that island), as to the possibility of making any of the resources at his disposal, applicable to the success of the expedition.

Having arrived off the Cape, you will, if you should have no previous reason to suppose that your approach has transpired, endeavour, by a vigorous and immediate attack (having previously summoned the garrison to surrender), to avail yourself of the probable neglect of due vigilance and precaution on the part of the garrison. As it

line, which sailed in May from Rochefort with troops on board, and which are yet unaccounted for, may have thrown themselves into the Cape with a reinforcement of troops, you will not rely with too much confidence in the enemy's means of resistance being confined to the numbers stated at the outset of these Instructions. Should you be of opinion that the reduction of the place may be facilitated by opening a communication with the inhabitants and persons in authority, you are authorised and directed, in conjunction with the Officer in command of his Majesty's Naval force, taking care not to waste too much time in such negociation, to grant to the garrison and the inhabitants such favourable and liberal terms of capitulation as may appear to you best calculated to acquire the possession of the place in the most expeditious manner, and with the least loss or hazard to the ships and troops employed on this service.

Upon the surrender of the place to his Majesty's arms, taking possession of it in the King's name, and duly attending to the stipulations of any capitulation which may be previously agreed on, you will take upon yourself, under the title of Lieutenant-Governor, the civil government of the settlement, till his Majesty's further pleasure is declared, and continue to carry on the Administration (preserving to the inhabitants the enjoyment of their private property, usages, and religion), as nearly as may be, according to the system laid down and established by his Majesty's authority during the late war, and under which the colony enjoyed, till the period of its restitution, so much prosperity and happiness.

As I understand the troops now in garrison at the Cape are mostly Germans, and much disgusted with the Dutch service, you will take the earliest opportunity of inducing them to enter into his Majesty's 60th

them in equal proportions as supernumeraries to the regiments in garrison, until measures can be taken for transferring them under their own officers.

If, after using your best endeavours to procure the whole of these men for the King's service in the manner above directed, any Foreigners (not being French subjects) having so declined to engage, should nevertheless be willing to enlist for service in the East Indies, you will engage them for the service of the East India Company, according to the terms of enlistment usual in the European branch of their army, a statement of which you will receive herewith inclosed, and you will exercise your own discretion in the retaining or enlisting Hottentots, in case the public service shall appear to you absolutely to require that this additional expense should be incurred.

As it is important that the Company's ships directed to co-operate in this expedition, and placed with a view to this special service under the orders of the Naval Officer in the command, should be delayed at the Cape for as short a time as possible, I have his Majesty's commands to direct that you use your utmost diligence to have the troops and recruits, destined for India, expeditiously re-embarked, in order that they may proceed under the convoy of the Belliqueux to their ulterior destination, notifying by them, or by the earliest opportunity which you can find, the surrender of the Cape to the several Presidencies in India, in order that the accustomed intercourse with the colony may be opened, and such supplies received, as may be required for the use of the settlement.

In the event of circumstances arising, either to discourage you from landing the troops, or, in the event of your having made good your landing, to determine you to desist from the enterprise (contingencies I trust equally impro-

liable), it is his Majesty's pleasure (the India ships being detached to their destination), *that you do return with the remainder of your force to St. Helena, there to refresh the Troops and Squadron, and to receive further orders for the direction of your conduct.*

In case you should not find fresh instructions at St. Helena, continuing there not more than fifteen days, unless the refreshment of the squadron should render a longer delay indispensable, you will, at the end of that period, return to Cork, unless you should receive a different destination at Fayal, one of the Western Islands, where you are directed to call, and inquire for orders.

His Majesty has intrusted to you the conduct of the Military part of this service, under a full confidence in your experience, zeal, and discretion; and his Majesty implicitly relies on your cultivating the most cordial good understanding with the Officer to whom the command of his Naval force has been confided:—the ultimate success of the expedition principally depending on the cordial co-operation of the respective services, his Majesty is persuaded that their united exertions will be such as to entitle them to his Majesty's gracious and unqualified approbation.

I have the honor to be, &c.

(Signed) CASTLEREAGH.

To Major General Sir David Baird, &c. &c. &c.

No. II.—*Copy of a Letter to Sir* HOME POPHAM, *dated 2d August*, 1805.

SIR, Admiralty-Office, 2d August, 1805.

I AM commanded by my Lords Commissioners of the Admiralty to signify their direction to you, to send a Frigate to cruise on the East Coast of South America be-

shall have accomplished the object of the expedition on which you are about to proceeed, for the purpose of procuring intelligence of the enemy's motions, *in order that you may be prepared against any attack they may be disposed to make on the settlement.*

I am, &c.

Captain Sir Home Popham. JOHN BARROW.

No. III.—*Copy of a Letter to Sir* HOME POPHAM, *dated 14th September*, 1805.

SIR, Admiralty-Office, 14th Sept. 1805.

I AM commanded by my Lords Commissioners of the Admiralty to signify their direction to you to retain all the transports under your command at the Cape of Good Hope, after the reduction of that settlement, until you shall receive further orders.

I am, Sir,

Your most obedient, humble Servant,

JOHN BARROW.

Captain Sir Home Popham, commanding His Majesty's Ship Diadem, at Madeira.

No. IV.—*Sent by the Belle Packet; with one Inclosure.*

By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

THE Lord Viscount Castlereagh, one of his Majesty's Principal Secretaries of State, having, with his letter to us of the 10th of September, transmitted a copy of instruction, which, by command of His Majesty, he had furnished to Major-General Sir David Baird, commanding his Majesty's Land Forces on an expedition sent out for the

ing of reinforcement of troops from thence to the settlements in India, we transmit to you herewith, a copy of the said instructions for your information and guidance; and we do hereby require and direct you to co-operate with the Major General in the execution of his Majesty's Commands and the several points contained in the said Instruction, as far as it may be in your power, affording him every assistance in the selection of such transports as may be best suited to the service they are required to perform, and sending them under a proper convoy either to Bombay or Calcutta, according as the season of the year may afford the best prospect of a safe and expeditious passage.

In the event of its being found absolutely necessary to forward to India the whole force under the command of Sir David Baird (the Royal Artillery, Engineers, and Light Dragoons excepted, which, in this case will return to England under the convoy of one of the frigates, together with the Raisonable, provided she shall not have left the station,) you are to proceed to India in the Diadem, taking with you the Diomede, and having seen the said transports in safety to the place of their destination, return with the two ships abovementioned to the Cape of Good Hope or to St. Helena, according to circumstances, at one of which places you may expect to find orders for your further proceedings.

As it is of essential importance that such of the prisoners of war as it may not be expedient to suffer to enlist into the British service should be sent to Europe as speedily as possible, you are to use your best endeavours, in concert with the Major-General, to procure such tonnage of neutral vessels and others at the Cape for removing the said prisoners, as may prevent in as great degree as possible,

being found expedient to evacuate the settlement.—Given under our hands the 24th September, 1805.

BARHAM,
J. GAMBIER,
Commodore Sir Home Popham. P. PATTON.

By command of their Lordships,
JOHN BARROW.

Inclosure in No. IV.—*Copy of Instructions to Major-General Sir* DAVID BAIRD, *dated* 10*th Sept.* 1805.

(MOST SECRET.)

SIR, Downing-Street, 10th Sept. 1805.

THE last advices received overland from India, indicate a disposition on the part of Scindea, and the Rajah of Berar (in breach of the treaties subsisting between them and the East India Company) to enter into a hostile confederacy with Jeswunt Rao Holkar against British power. Should such an event actually take place, and, contrary to all just expectations, our armies in India experience any serious check, intelligence of which may probably reach you before it can be received in England, I have to convey to you his Majesty's commands, that in the event of your having acquired possession of the Cape, provided the exigency of the Company's affairs, upon the intelligence you may receive, shall appear to you to be such as to call for reinforcements, that you do without delay, and at the hazard even of reducing your garrison, for the time, considerably below what is required for the complete defence of the colony, detach the 38th and 93d regiments, consisting of the numbers stated in the margin,* to the East Indies, transmitting immediate notice thereof to me, in order that adequate reinforcements may be sent out to join you.

It is His Majesty's pleasure that the above regiments do proceed in such of the transports now with you as may be best suited to the service, under a proper convoy (if possible a ship of the line, on which subject the officer in command of his Majesty's Naval Forces will receive the instructions of the Lords Commissioners of the Admiralty) and that you do direct them to be landed either at Bombay or Calcutta, according as the season of the year and the state of the winds may afford the best prospect of a safe and expeditious passage.

Should you from any unforeseen circumstances be induced to desist from the enterprize with which you are charged against the Cape, you will under the contingency above-stated, in addition to the two regiments directed by my letter of the 26th of July to be in that case forwarded to India, make such further detachment as circumstances may apppear to you to require; considering yourself as authorised and directed (if there should appear an adequate necessity) to proceed to India with the whole force under your command, the Royal Artillery, Engineers, and Light Dragoons excepted, which you will return to England under convoy of a frigate.

The same precautionary principles which have induced his Majesty to direct the above instructions to be transmitted to you, have determined his Majesty to give authority to Marquis Cornwallis, or the person in the chief command of his Majesty's troops in India for the time being, to send to the Cape for reinforcements; and you are hereby directed to comply with any requisition you may receive to that effect.

You are not however to wait for such a requisition being made on you from Bengal, in case you should receive intelligence of the description alluded to in the former part of this dispatch; and, in order to render it the more consist-

ent with the security of the place, to detach largely from your garrison, you are to take measures as early as possible for sending to Europe such prisoners of war as you may not find it expedient to suffer to enlist into the British service; taking care to retain at the Cape as small a proportion as possible of the foreigners so permitted to enlist, should the number of your garrison be materially reduced; and with this view you may attach a considerable proportion of them to the regiments proceeding to India. I trust you will find no difficulty in procuring tonnage at the Cape for the removal of the prisoners to Europe, without encroaching on the transports attached to your army.

I am, Sir,

Your most obedient humble Servant.

(Signed) CASTLEREAGH.

Major-General Sir David Baird, &c.

No. V.—*Order to* Sir Home Popham, *dated the 21st of November*, 1805.

(copy.)

By the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

IN pursuance of the King's pleasure, signified to us by the Right Honourable Lord Castlereagh, one of his Majesty's Principal Secretaries of State, in his letter of this day's date, you are hereby required and directed, in the event of the surrender of the Cape of Good Hope to his Majesty's arms, to send home, without delay, under a proper convoy, all the transports which are not wanted for the

Indies. Given under our hands the 21st of November, 1805.

P. STEPHENS,
J. GAMBIER,
W. DICKENSON.

To Commodore Sir Home Popham,
Cape of Good Hope.

By command of their Lordships,
WM. MARSDEN.

No. VI.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 13th of January*, 1806.

SIR, Diadem, Table Bay, Jan. 13, 1806.

WHEN I address you for the information of the Lords Commissioners, on an occasion of such public interest and importance as the capture of the Cape of Good Hope, which is now in possession of his Majesty's troops under that renowned General Sir David Baird, I consider it unnecessary to trouble their lordships with a detailed account of the proceedings of the fleet from St. Salvador, which however will be conveyed in another dispatch.

On the 3d instant we made Table Land, and on the 4th, in the evening, we reached our preconcerted anchorage to the eastward of Robben Island, though too late to do any thing but take a superficial view of Blue Berg Bay, where it was proposed to land the main body of the army, making, however, a demonstration off Green Point, with the Loda frigate and the transports, containing the 24th regiment, which was certainly very well executed by Captain Honyman.

On the 5th, at three o'clock in the morning, the troops were put in the boats, and assembled alongside of the Espoir, but the surf ran so high that a landing was deemed totally impracticable and consequently the

to their ships, and I immediately accompanied the General on board the Espoir, for the purpose of making a close examination of the whole coast, from Craig's Tower to Losperd's Bay, on no part of which did it appear possible to land a single boat without extreme danger.

To the evil consequences of delay, in commencing operations on an enemy's coast, was to be added the very alarming possibility that some reinforcement might arrive by one of the various squadrons in motion when we left Europe, and therefore the General and myself were induced to consider, that however difficult the task might be of advancing from Saldanha Bay, yet it was an object of very great moment to accomplish a safe and speedy landing for the troops; and the instant the decision was made the Diomede, with the transports of the 38th regiment, the cavalry ships, and a proportion of Artillery, under the orders of General Beresford, sailed for Saldanha, preceded by Captain King in the Espoir, having on board Captain Smyth of the engineers (an officer well acquainted with the country) with a view of seizing the post-master, and as many cattle as possible, antecedent to the arrival of the advanced division of the fleet.

Soon after the Diomede weighed the westerly wind began to abate, and on the 6th, in the morning, the officers examining the beach reported, that the surf had considerably subsided during the night, which indeed was so evident from the Diadem, when she stood in shore, that I requested Sir David Baird to permit General Ferguson and Colonel Brownrigg, the Quartermaster General, to attend the officer on his second examination, that their feelings might in some measure be balanced against those of professional men, and to satisfy the army that no measure, in which its safety was so intimately connected,

In the mean time the Diadem, Leda, and Encounter, were placed in a situation to render the most effectual assistance, and the 71st and 72d regiments, with two field-pieces and a howitzer ready mounted, in the boats of the Raisonable and Belliqueux, rendezvoused alongside the two former ships, manifesting the most ardent desire for the signal from General Ferguson.

At this moment the Protector joined the squadron, and Captain Rowley, who was well acquainted with the anchorage, volunteered his services to place her to the northward, so as to cross the fire of the Encounter, and more effectually cover the landing of the troops.

Captain Downman at the same time went in shore with a light transport brig, drawing only six feet, to run her on the beach, if it would in any degree facilitate the debarkation of the troops.

At half-past twelve the Encounter conveyed, by signal, General Ferguson's opinion, that a landing might be effected, and the joy that was manifested in the countenance of every officer heightened the characteristic ardour of the troops, and under an anxiety probably to be first on shore, induced them to urge the boats to extend their line of beach further than was prudent, and occasioned the loss of one boat, with a party of the 93d regiment.

I report this event to their lordships with the most unfeigned regret, and it is doubly painful to me, because from all the efforts of an enemy, posted on an advantageous height, the army had only two men wounded in landing. This circumstance most fully proves how well the covering vessels were placed, and how ably their guns were served; and I trust my country will acquit me of having applied every expedient that could be devised, to prevent the occurrence of an accident which I so sincerely deplore.

The surf increased considerably towards the close of the

evening, and about eight o'clock the landing of any more troops was stopped, but recommenced in the morning, when all the men and provisions, which the General judged necessary to take, were disembarked without a moment's loss of time.

Conceiving that a detachment of the squadron might be of service at the head of the Bay, I proceeded there with the Leda, Encounter, and Protector, and a division of transports; and I understand, from firing occasionally that evening over the bank, towards the Salt Pan, that the enemy was obliged to move from an eligible situation which he had before occupied.

On the following morning we discovered the British army advancing, with an unparalleled rapidity, over an heavy country, defended by a numerous train of artillery; and as I conceived a few fresh troops might be applied to advantage, I desired Captain Downman to land with the marines of the squadron, and two field-pieces, to await the arrival of Sir David Baird, at Reit Valley, who I very soon after had the pleasure of personally congratulating on the victory he had obtained over a General of such high military fame as General Jansen.

When the army was in motion to take up its position at Craig's Tower, and while I was proceeding up the Bay to anchor in the most convenient place for landing the battering train, a flag of truce was discovered coming towards the Diadem, by which I received the letter No. 1, from the Commandent of the Town and Castle; and the next day, in conjunction with Sir David Baird, the capitulation, No. 2, was accepted, and at six a royal salute fired from the squadron, on his Majesty's colours being once more hoisted on the castle.

Although their lordships will perceive by the detailed account of our transactions here, and the accompanying

plan of the different dispositions which were made, that no brilliant service fell to the lot of the squadron I have the honour to command, yet it is what I owe every officer and seaman to state, that, under the most laborious duty I ever experienced, their zeal never abated. To Captain Rowley I feel personally indebted for his readiness on every occasion, and I have no doubt but the highest satisfaction will be expressed of the conduct of Captain Byng, who commanded the marine battalion, by an authority far exceeding mine; and I inclose for their lordships' information, a copy of the report he made me on the conduct of the officers serving in that battalion, to which, exclusive of those belonging to the squadron, are added Captain Hardinge of the Salsette, and several other officers, now on their passage to India to join their ships.

Captain Butterfield and Lieutenant Cochrane, of the transports, were on all occasions ready to forward the service; and we are particularly indebted to Captains Cameron, Christopher, and Moring, of the Honourable Company's Ships the Duchess of Gordon, Sir William Pulteney, and Comet, who particularly exerted themselves in assisting the troops through the surf.

It is impossible for me to transmit any returns of the stores taken, by this opportunity, or of the state of the Bato of 68 guns, in Seaman's Bay; but it is, however, so strongly reported that the enemy has not completely succeeded in his attempt to burn her, that I have sent Captain Percy to take possession of her, and, if possible, to move her into safety, as the enemy has totally abandoned her.

Captain Downman, of the Diadem, will have the honour of delivering this dispatch to their lordships; and from the intelligent manner in which I am satisfied he will explain

actuated, I trust he will require no further recommendation to thèir lordships' protection.

I cannot, however, conclude this letter without assuring their lordships, that I know no instance where a stronger degree of confidence and unanimity has been exemplified between the two professions, than on the present occasion; and I humbly hope this circumstance, coupled with the meritorious and successful issue of Sir David Baird's military dispositions, will recommend this armament to his Majesty's most gracious favour and protection.

I have the honour to be, Sir,
Your most obedient humble servant,
(Signed) HOME POPHAM.

William Marsden, Esq. &c. &c.
Admiralty, London.

No. VII.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 28th of January*, 1806; *with one inclosure.*

His Majesty's ship Diadem, Table Bay,
28th January, 1806.

SIR,

IN my letter of the 15th, I had the honour to inform you that the Raisonable and Belliqueux, with two transports, having on board the 83d Regiment, sailed from this anchorage, for Gordon's Cove in False Bay, with a view of eventually proceeding to Muscle Bay, in case the line of conduct which Lieut.-General Jansens intended to pursue should make it necessary to land troops to the eastward, for the purpose of investing the strong position which he occupied at Hottentot's Holland Kloof, or cutting off his retreat into the Kaffer country.

The disposition, however, which the Lieutenant-General manifested in the first instance to resist every rational ac-

changed, by his expressing a desire to see Brigadier-General Beresford, whom Sir David Baird immediately dispatched to the Batavian camp, with ample authority to enter into negociations with General Jansens.

I have now the honour to inclose to you, for the information of my Lords Commissioners of the Admiralty, the result of that negociation, which has given to his Majesty the entire possession of the settlement of the Cape of Good Hope with all its dependencies.

It may, however, be urged on a critical examination of the treaty, unaccompanied by any reflection on the horrors of a long predating war, that the terms granted were more liberal than the nature of the case required; but to the nice and discriminating judgment of their Lordships, the destructive consequences of such a warfare must be so evident, that I have no doubt but they will duly appreciate the advantages which have been obtained by the promptitude of Brigadier-General Beresford; who, to the long-established character of an excellent soldier, has added the no less enviable one of an able statesman.

I am, &c. &c.

To William Marsden, Esq. HOME POPHAM.

Inclosure in No. VII.—*Articles of Capitulation, proposed by Lieutenant-General Jansens, Governor and Commander in Chief of the Batavian Forces at the Cape of Good Hope, to Brigadier-General Beresford, duly authorized by Major-General Sir David Baird, K.C. and Commodore Sir Home Popham, K.M. commanding the military and naval Forces of His Britannic Majesty.*

ARTICLE I. ARTICLE I.

As soon as this Capitulation is Agreed to.

Hope, with all its dependencies, and the rights and privileges held and exercised by the Batavian Government, will be considered as surrendered by the Governor Lieutenant-General Jansens to His Britannic Majesty.

II.

The Batavian troops are to march with all their baggage, arms, &c. to a place hereafter to be agreed upon, and retain every thing, as well what belongs to the state as to individuals, and be at liberty either freely to dispose of the same, or, if they prefer, take every thing away with them.

II.

The Batavian troops shall march from their present camp, within three days, or sooner if convenient, with their guns, arms, and baggage, and with all the honors of war, to Simon's Town; they shall retain all private property, and the officers their swords and horses.

But their arms, treasure, and all public property of every description, together with the cavalry and artillery horses, must be delivered up. In consideration, however, of their gallant conduct, the troops will be embarked and sent straight to Holland at the expense of the British Government, and shall not be considered as prisoners of war, they engaging not to serve against his Britannic Majesty, or his allies, until they have been landed in Holland.

III.

The Battalion of Hottentot light Infantry shall, with the rest of the troops, march to the place to be agreed upon; and there being disbanded by General Jansens, shall be at liberty to return to their own country.

III.

The Hottentot soldiers are to march to Simon's Town with the other troops; after which they will be either allowed to return to their own country, or be engaged in the British service, as they may think proper.

IV.

Under this Capitulation shall be comprehended all militarymen who, being wounded, have not been able to follow the army, and have fallen into the hands of the British.

IV.

These persons, being already prisoners of war, any decision respecting them belongs only to the British Commander in Chief.

V.

The officers and men belonging to the Batavian army are to be subsisted at the expense of the British Government, until they are embarked.

V.

Agreed to.

VI.

The troops shall be transported to such ports of the Batavian Republic as shall be selected by Lieut.-General Jansens.

VI.

The troops, as in the Answer to the Second Article, shall be sent to some port in Holland.

VII.

The sick, who cannot be removed, with the other soldiers, are to be attended at the expense of his Britannic Majesty; and, when recovered, sent to Holland.

VII.

Agreed to.

VIII.

The inhabitants of the colony, who are comprehended in this Capitulation, are to enjoy the same rights and privileges as have been granted to those in Cape Town, according to the Capitulation of the 10th instant.

VIII.

Agreed to; with the exception of not quartering troops, the country not having the same resources as the town; and this right having been always an appendage to the Batavian Government.

IX.

The troops, whilst on board ship, are to be accommodated and fed, according either to the Dutch or English method, as is most beneficial to them.

IX.

The troops, when embarked, will be treated in every respect as British troops when on board transports.

X.

Lieutenant-General Jansens shall be at liberty to send home a dispatch to Holland, and will receive assistance from the British Commanders in forwarding the same.

X.

Agreed to.

XI.

The Baron of Hogendorp, having expended a great deal of money for the execution of agricultural plans, he shall be supported by the British Government in carrying his plans into execution; and the British Government shall grant unto him all such privileges as, from the public records, it shall appear the Batavian Government meant to have given him.

XI.

This Article must be left entirely to the discretion of the future British Governors or Commanders.

XII.

If, in this Capitulation, any thing doubtful may occur, it shall be *bona fide* construed to the benefit of the Batavian Government.

XII.

If any doubt should arise, as to any Article contained in this Capitulation, it shall be decided according to what shall appear to be just and honourable, without any preference to either party.

Given under our hands and seals this 18th day of January, 1806, at Hottentot's Holland.

(Signed) J. W. JANSENS.
W. C. BERESFORD.

Executed in the presence of

(Signed) J. A. TRUTER.
J. C. SMITH.

Ratified and confirmed in the Castle of Good Hope, this 19th day of January, 1806.

(Signed) D. BAIRD, Maj. Gen.
Commanding in Chief.

HOME POPHAM,
Commodore Commanding his Majesty's Naval Forces.

No. VIII.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 22d of February*, 1806.

SIR, Diadem, Table Bay, 22d Feb. 1806.

THE Rollo English brig letter of marque, which was taken by the Marengo, in company with the Belle Poule, in Carbonde Bay, on the coast of Africa, came into this anchorage yesterday; and by a boat's crew dressed in French, the officer commanding the prize had not time to destroy his dispatches, *by which means two letters from Admiral Linois to General Jansens, the former governor at the*

Cape, and to the minister of marine at Paris, fell into my hands; and I have the honour to transmit you, for the information of my Lords Commissioners of the Admiralty, translates of each. It appears evident, that he never intends to go again to the Isle of France, as the more urgent his necessities may be in point of provisions, the less likely he is to be relieved at that place.

This morning a Danish ship, from Copenhagen bound to Batavia, came into Table Bay, and the master of her said he had been boarded, the evening before, by the Piedmontie French frigate, which was bound to the Isle of France; she had fifteen ports on the main-deck, and was apparently a very large ship. I shall send this intelligence, with the copy of the letter alluded to, to Sir Edward Pellew, by the Whitby transport, which will sail in a day or two for Madras.

The letters from Admiral Linois are rather too equivocal to say exactly when he will arrive, but he may be expected from the beginning to the end of March; and as the Northumberland and Euphrates Indiamen are expected the beginning of the ensuing month, I shall proceed immediately off the Cape with my whole squadron, to prevent if possible his falling in with such valuable ships as they will be to him, as well in point of the intelligence they would give him as the great supply of provisions and stores of which he stands so essentially in need of.

Under all the circumstances of the intelligence which I have received, I hope their lordships will not consider that I act improperly in detaining the Raisonable a little longer here, especially as I learn, by the return of the Leda, that there are only two Company's ships arrived at St. Helena.

I have the honour to be, Sir,

Your most obedient humble servant,

No. IX.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 4th of March*, 1806.

SIR, Diadem, Table Bay, 4th March, 1806.

I BEG you will do me the honour to inform my Lords Commissioners of the Admiralty, that the Diadem, Leda, and Diomede, anchored here yesterday evening; and at nine this morning, a ship was discovered coming from the southward under a press of sail, and soon after two more, one of which the station on the Lion's Rump reported to be of the line, and an enemy's ship. As the Marengo and Belle Poule were hourly expected, I thought it possible it might be them, and I directed the Diomede and Leda to slip, and keep on the edge of the south easter, which had partially set in on the east side of the Bay.

At eleven, the headmost ship hoisted French colours, and stood towards the Diadem; and, by this time, I was satisfied from the judicious manœuvres of the ships in the offing, that they could be no other but the Raisonable and Narcissus.

At twelve, the French frigate passed within hail of the Diadem, when we changed our colours from Dutch to English, and directed her to strike, which she very properly did immediately, and I sent the Hon. Captain Percy, who was serving with me as a volunteer, to take possession of her: she proved to be La Volontaire, *the forerunner of Admiral Willeaumez's squadron*, she is nearly eleven hundred tons, and mounts 46 guns, with a complement of 360 men on board.

I congratulate their Lordships, that, by this capture, detachments of the Queen's and 54th regiments, consisting of 217 men, who were taken in two transports in the Bay of Biscay, are restored to His Majesty's service.

I have the honour to be, &c.

To Wm. Marsden, Esq. (Signed) HOME POPHAM

No. X.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 12th of March*, 1806.

SIR, Diadem, Table-Bay, 12th March, 1806.

I AM sorry to acquaint you for the information of my Lords Commissioners of the Admiralty, that I have been much disappointed in my expectation of raising the Atalanta French frigate after three trials; not but what I still think it possible by the casks, if we had not other objects of material consequence to attend to. Indeed, I had begun to prepare casks for the purpose, and had absolutely placed near two hundred, when the possibility of the enemy coming suddenly upon us, when a number of our men were absent, made me relinquish the idea of attempting again to raise her.

I trust their Lordships will not consider that any exertions have been wanting on my part to accomplish this object.

I have the honour to be, &c.

To Wm. Marsden, Esq. HOME POPHAM.

&c. &c. &c.

NO. XI.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 12th of March*, 1806, *with one Inclosure.*

His Majesty's ship, Diadem, Table Bay,

SIR, 12th March, 1806.

I HAVE the honour to inclose to you, for the information of my Lords Commissioners of the Admiralty, the copy of a letter which I received from Sir David Baird, to order two transports for the service of enabling him to send to France the whole of the French prisoners in the garrison, on the same terms which I sent home those belonging to La Volontaire.

In complying with his request I only acted consistently

laid down myself, and I hope these will appear to their Lordships to be founded so much on public expediency that they will have the goodness to approve my conduct.

The disadvantages, if not the extreme danger, that would attend the detention of so many French prisoners, at a time *when an attack on the colony* is a possible case, and likely to be so for some days longer, are so evident that I trust it will be considered by their Lordships as unnecessary for me to enter into any detail on that subject.

The same opinion on the propriety of this arrangement will, in all probability, induce me to adopt similar measures, in the event of our being so fortunate as to capture any part of the squadrons, of which we have had intelligence, by their coming in here by small proportions to water and victual.

I have the honour to be, &c.

To Wm. Marsden, Esq. (Signed) HOME POPHAM.
&c. &c. &c.

Inclosure in No XI.—*Copy of a Letter from Sir* DAVID BAIRD, *dated the 8th of March*, 1806.

Government House, Cape Town,
8th March, 1806.

SIR,

ACTUATED by the strong reasons which have determined you to send the late captain, officers, and crew of La Volontaire French frigate direct to France, I have come to the same resolution with respect to Captain Bouchene and the other French prisoners on shore, and on board the Atlas transport.

I have in consequence to request you will be pleased to inform me, if tonnage for the accommodation of 346 persons, officers included, can be provided in transports; in which case I could wish the vessels to be got ready for the reception of the prisoners with all practicable dispatch.

It is my intention to enter into the same agreement with Captain Bouchene, as that you have made with Captain Brettel, late of La Volontaire.

I take occasion to mention, that the deputy inspector of hospitals has this morning reported, that in consequence of the admission of so many patients belonging to the Navy, the General Hospital is extremely crowded.

His Excellency Commodore Sir Home Popham, &c. &c. &c.

I have the honour to be, &c.
(Signed) D. BAIRD,
Major-General.

No. XII.—*Copy of a Letter from Sir* HOME POPHAM, *dated the* 15*th of March*, 1806.

SIR, Diadem, Table Bay, 15th March, 1806.

I BEG you will do me the honour of stating to my Lords Commissioners of the Admiralty, that Captain Arbuthnot, who commands the Cavalry Piquet at Saldanha Bay, has this day reported the arrival of a Whaler in that Bay, who on the 25th of February, in the lat. 33 deg. 50 min. south, and long. 50 min. east of Greenwich, fell in with eight sail of ships, steering about E.S.E.; he thought they were English East India ships, but the weather was very hazy, and he was not long in sight of them.

Admiral Willeaumez's squadron consists only of seven sail, but they may have taken a prize, or this may be a small convoy of Indiamen, of which however their Lordships will be able to judge pretty accurately, by reference to the departure of any convoy from Europe, whose date will coincide with the date and position of the present eight sail of ships.

I have the honour to be, Sir,
Your most obedient humble servant,

Wm. Marsden, Esq. (Signed) HOME POPHAM

No. XIII.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 21st of March*, 1806.

SIR, Diadem, Table Bay, 21st March, 1806.

AFTER concluding my letter yesterday afternoon,* a brig, under Hamburgh colours, arrived from Tonnigen; she had been boarded by Admiral Willeaumez's squadron, consisting of seven sail, on the 25th ultimo, in latitude 33 deg. 23 min. longitude 6 deg. 10 min. east; on the same evening, it blew very hard from the S. S. E. and the following day he saw the squadron lying to.

When this brig was boarded by the Leda, to the southward of Green Point, the master asked where the Leda came from: he was answered from St. Helena, and to cruise off the Cape; on which the master of the brig replied, "Get off as fast as you can, or the French fleet will take you;" and he then gave him the information contained in the preceding paragraph.

On the brig anchoring here, I examined the master very closely, to find out whether he had any reason to suspect that the squadron was coming here, from what occurred while he was on board the French man of war; he declares not; that he told them he was bound here for a market, and shewed all his papers, but no circumstance whatever arose while he was on board the French ship to induce him to suppose that it was suspected we were in possession of the Cape; and he most positively declares that he had not the smallest idea of it. Now, from the position in which he left the French fleet, there is little probability of their having obtained any information from this place, because there has been an embargo on, ever since our arrival, till within these few days, and then it was only taken off for those bound to the northward.

If, therefore, they are really bound here, their arrival must be determined in the course of ten days, when even

* See this Letter, with one of the 5th of March, in the Gazette Extraordinary of the 22d instant.

with the greatest economy they cannot have above five weeks water on board; and no man of prudence would risk a squadron of such consequence to an alternative of more hazardous speculation than such a period of time would expose it to.

They sailed the 14th of December with seven months provisions at full allowance, and directly after their departure from Brest an order was given to make their water last five months; and if their daily consumption should be so proportioned as to enable them to adhere to the letter of such an instruction, they may probably extend their cruise a little longer; but if, antecedent to the period of their intended visit to this place, (if such an intention really exists), they should hear that we are in the possession of the Cape, then it appears to me that they must decide instantly on one of the only two arrangements that appear most natural for them to adopt:—First, if according to the supposition of the German officer we have detained, they should have objects of consequence to follow in the West Indies, in co-operation with Admiral Leissegues, they will then decide to go to Rio de Janeiro to complete their water and provisions, and then proceed to their ultimate destination; in which case the precaution I have taken to give Admiral Cochrane information will I hope be well timed.

If, on the other hand, they should have no view towards the West Indies, then they must proceed to the Isle of France; and as the season is now setting in for our cruisers to block up Port Louis, I think it very possible that the sudden arrival of such a force might endanger the capture of whatever squadron may happen to be there; and on that account I have decided to dispatch the Rolla brig, with a copy of all my correspondence on this subject, and I hope she will be ready to proceed in forty-eight hours.

I have already informed their Lordships that I could only procure a few Lascars to man her. As however the object of conveying this intelligence to our cruisers off the Isle of France may be of the last moment, if my premises upon the whole of this subject be founded on reasonable grounds, I shall order a few Europeans to be discharged from each of the ships under my command, however ill they can spare them, to make her competent to the service.

Another difficulty which occurred in finding an officer to command her for the spur of the moment, has been removed by the voluntary offer of service of Mr. Brown, the master-attendant, whose zeal on this occasion will, I hope, recommend him to their Lordships' notice.

I have already acquainted their Lordships, that this information has been sent in duplicate to Sir Edward Pellew in India; but while any surmises exist of a possibility that Admiral Willeaumez may go to the Mauritius, I considered it an essential part of my duty to use every exertion in conveying this intelligence to the Isle of France, which their Lordships will see, by the annexed copy of my order to Mr. Brown, that he is directed to remain forty-eight hours, and then return to False Bay.

I have the honour to be, &c.

Wm. Marsden, Esq. (Signed) HOME POPHAM.
&c. &c. &c.

No. XIV.—*Copy of a Letter from Sir* HOME POPHAM, *dated the 9th of April*, 1806.

His Majesty's ship Diadem, Table Bay,

SIR, 9th April, 1806.

AS the season is now very far advanced for lying in this Bay, and the weather particularly unsettled for the time of the year, I propose quitting it with the squadron immediately; more especially as, from the length of the time

that has elapsed since we heard of Admiral Willeaumez's fleet, it is very improbable, consistent with the situation he was then in, that he should come here at present.

To determine his position at the moment would be impossible; and it is almost equally difficult to decide on the best mode of applying the exertions of the squadron, the ensuing two months, to the greatest advantage.

The intelligence we received by the Volontaire, and which has already been transmitted to you for their Lordships' information, appears materially to incline to the supposition that the West Indies is the destination of Admiral Willeaumez's fleet; but General Anker, the late governor of Tranquebar, who is just arrived here on his passage to Europe, informed me, in the course of conversation, *that a French squadron was expected at Mauritius, but that it was* impossible for that island to supply any flour to it, without looking to Rio de la Plata, or the coast of Brazil, for a supply; *on which consideration I think employing the squadron in cruising a short time off that coast instead of remaining idle, will be a disposition fraught with some advantages, and which I hope will appear so evident to their Lordships as to induce them to approve of the measure.*

As this letter is to be conveyed by a Foreign ship, I shall not enter into any minute detail, but say it is my intention to proceed off Rio de la Plata in the first instance, to send the Raisonable to her destination by the time fixed; the Diomede to Rio de Janeiro to procure rice for the colony, of which it is in the greatest want, and return immediately to False Bay with the other ships, unless I should hear that Admiral Linois is at St. Catharines, preparing to cruise for the outward-bound East India trade; in which case I shall endeavour to intercept him, *if it does not infringe on the time of my return to the Cape to receive their Lordships' commands, in consequence of the dispatches*

When I have the opportunity of a safe conveyance to write more fully to their Lordships, I hope the additional reasons I shall give will be sufficient to satisfy their Lordships of the expediency of the measures which I am now about to adopt. I have the honour to be, &c.

Wm. Marsden, Esq. (Signed) HOME POPHAM.
&c. &c. &c.

No. XV.—*Copy of a Letter from Sir* HOME POPHAM, *dated the* 13*th of April*, 1806; *with two inclosures.*

SIR, Diadem, Table Bay, 13th April, 1806.

I HAD the honour to address you on the 9th instant, for the information of the Lords Commissioners of the Admiralty, and, as stated in that letter, I weighed on the 10th with a light breeze; but it soon after fell calm, and I was obliged to anchor in the outer part of the Bay.

In the evening I received some intelligence respecting the weak state of defence which Monte Video and Buenos Ayres were in, and I returned to the shore the following morning to communicate it to General Sir David Baird.

This intelligence so fully corroborated *what I had already received from various quarters*, that I suggested the expediency of sparing a few troops for a short time, to enable us to bring a question of such importance to an immediate issue.

I hesitate not to confess to their Lordships, *that I urged it with every argument in my power*, from a conviction of the great and splendid benefits which the country would derive by a conquest of such a nature at this moment: *embracing considerations of various advantages, not only to the Mother Country, but to this Colony*, which has been threatened, more or less, for many years with famine, owing to the failure of its crops.

The result of my inquiries *for many years, respecting*

South America in general and Buenos Ayres in particular, have been presented to his Majesty's Government; and *as it was at one time settled that I should be sent there*, I took every pains to form a detailed project for a combined operation, and which I had the honour of giving to the late, and sending to the present, First Lord of the Admiralty.

After Sir David Baird had seriously considered this subject, and consulted with General Beresford on the occasion, he determined to accede to my proposition; and the 71st Regiment was ordered for embarkation, under the direction of Brigadier-General Beresford. And I have the pleasure to inform their Lordships, that the whole of that regiment, with its detachment of artillery, horses, and all its other departments, are embarked, and we only wait a breeze to sail; and, the concurrent testimonies of various people, whom we have examined, gives us the greatest prospect of success.

If our expectations are realized, I shall lose no time in bearing myself the dispatches for England. Sir David Baird will notice this to Lord Castlereagh, and assign the reasons on which such a decision was founded; one of the principal ones, however, is that of conveying to their Lordships the true situation of the country, its commerce, resources, disposition of the inhabitants, and the extent to which its exportations may be carried; with a scale also of the consumption for the manufactures of Great Britain.

Although these are points on which I cannot doubt but their Lordships have collected a great deal of information, yet I consider what may be personally conveyed by an Officer, whose sole ambition is to obtain their Lordships' confidence and good opinion, will be more general, more correct, and more specific than any which can be obtained by other channels; and, as Captain Rowley is the next Officer on the list to myself, I considered that the service would be deprived of little dignity, with respect to rank

and certainly none in point of zeal, judgement, and ability.

I have only presumed to say a few words on the advantage which we may derive by the exports from this country, by the channel of importation which it opens up a navigable river of many hundred leagues to supply several millions of inhabitants with the manufactures of the United Kingdom:—There is, however, another, not of less consequence on any consideration, which is that of depriving the enemy of this most valuable trade, which is carried on entirely under neutral flags.

These prospects not only apply to Great Britain, but the communication with this Colony will remove all idea of famine in future, and be attended with vast reciprocal advantages far beyond any calculation of risk in the present undertaking.

This letter will go by a neutral ship, but I hope under such a precaution as will almost insure its safe delivery; I will, however, not enter into any further particulars, but state, for the information of their Lordships, that the moment the place is taken, I shall send to Rio de Janeiro; because it may enable his Majesty to give discretionary powers to any troops bound to India, touching at Janeiro, to proceed to La Plata, if the Commanding Officer hears that it is in our possession.

I will also send notice to St. Helena, as the Governor may be induced to spare us a few troops from that Island; and I have already advised him of this enterprise, hoping that, in the first instance, he may be able to detach one hundred artillery-men in the Georgiana packet, and at the same time acquaint me he has information of a man-of-war from England, for his June convoy, which will prevent the necessity of my sending the Raisonable or another ship there from La Plata.

I inclose to their Lordships

have received from the master and owner of an American ship, who is now on board the Diadem; and the result of many examinations is, that there are not above five hundred regular troops at the two places, some provincial cavalry and militia; that the walls of Monte Video are in a very ruinous state; and the inhabitants disaffected beyond any calculation.

I hope the view I have given their Lordships of my conduct, and the motives by which I was induced so strongly to press on Sir David Baird the expediency of undertaking a project of zeal, enterprise, and exertion, promising so much honour and prospects of advantage to the Empire, will be considered by their Lordships *as far preferable to the alternative of allowing the squadron I have the honour to command to moulder away its native energy, by wintering in False Bay, and eventually become paralysed, after remaining so long as it has done in a state of cold defensive inactivity.* I have the honour to be, &c.

(Signed) HOME POPHAM.

To William Marsden, Esq. &c. &c.

Inclosure (No. 1.) in No. XV.—*Copy of a Letter from Sir* Hóme Popham *to the Governor of St. Helena, dated the 13th of April,* 1806.

His Majesty's ship Diadem, Table Bay,
13th April, 1806.

Sir,

I HAVE the honour to acquaint you, that, from various informations I have received from different people of the defenceless state of Monte Video, Buenos Ayres, and their dependencies, I have deemed it expedient, with the squadron under my command, assisted by his Majesty's 71st Regiment, to proceed on an expedition against those places, not doubting in the smallest degree of such success as will add lustre to his Majesty's arms, distress our enemies, and

My object in addressing your Excellency on this subject is, to request you will spare a company of Artillery, or any other force you may think proper, to aid this enterprise; and that you will have the goodness, with your usual zeal for the service of your country, to lose not a moment in forwarding them in the Georgiana packet, as the most expeditious mode.

I am prompted to make this application from a conviction that such an acquisition as the capture of those places would give you high satisfaction, inasmuch as they will, among their numerous advantages, in a certain degree add to the commerce and safety of the island you govern, as well as be an additional safeguard to the trade of the Honourable East-India Company.

I take the liberty to trouble your Excellency with a dispatch to the Lords Commissioners of the Admiralty, under a flying seal, that you may read them, and be more fully acquainted with my reasons and intentions than I am at present in my hurry able to inform you of.

I beg you will do me the honour to state what prospect you have of any ship of war arriving at St. Helena, for your June convoy, from any communication you may have lately had from Europe, as it would make a material difference for me to send one of my small squadron to perform that service; but if you have not a certainty of such an event, I will take care to provide a man-of-war to be at St. Helena in June.

I feel assured that I need not use any arguments to convince you of the propriety of the present undertaking, or to induce you to give every assistance in your power, when I recollect that I address an old Officer, who has risen so deservedly in the service of his country to so high and exalted a station.

me at Monte Video, either with troops or intelligence, *as the smallest force would assist us materially.*

I have the honour to be, &c.

(Signed) HOME POPHAM.

Honourable R. Patton, Governor,
in Council, &c. &c.

Inclosure (No. 2.) in XV.—*Copy of a Letter from the Master of an American Ship, to Sir* HOME POPHAM, *dated the 28th of March*, 1806.

(PROFOUND SECRET.)

SIR, Cape of Good Hope, March 28, 1806.

I BEG leave to represent to you, that I have been three times to Buenos Ayres and Monte Video; that both places have the greatest abundance of wheat, flour, and indeed every sort of provisions. From my knowledge of the minds and dispositions of the inhabitants, I can assure you that his Majesty's squadron, under your command, with a small military assistance, would, with ease, take possession of either of those places; and if permanent possession could be effected, there is not the smallest doubt of procuring any quantity of flour; and to prove to you that it is not an idle suggestion to mislead the British, I could have no objection to be one of five hundred men to attack either place. I am sure the inhabitants are so ridden by their Government, that to prevent a shot being fired at Monte Video, if they had any threat from the men of war, they would send out any quantity of flour or biscuit, to prevent mischief; but the places may be taken as I describe, and if the trade is thrown open, all the inhabitants would willingly acquire and keep the place for the British nation without troops, which would be a mine of wealth; I hope you will not make mention of my name improperly, as it may injure me

service to do what you please to get possession of Buenos Ayres.

I am, &c.

Commodore Sir Home Popham,
&c. &c. &c.

No. XVI.—*Copy of a Letter from Sir* HOME POPHAM, *dated 30th April*, 1806; *with three inclosures.*

SIR, Diadem, St. Helena, 30th April, 1806.

CONFORMABLY to the letter I had the honor of addressing you the 13th instant, I sailed from the Cape with the ships named in the margin,* having on board the 71st Regiment, with a small detachment of Artillery, and a few dismounted Dragoons.

On the 20th, at night, in very squally unsettled weather, attended with a high sea, the Ocean parted company, and as I thought it possible she might have rolled away her mainmast, and bore up for St. Helena, it was deemed adviseable to bear up for that island, not only on account of the Ocean, but because it had been suggested as possible that the Governor might be able to spare a few hundred troops to strengthen the expedition, especially as it had been proposed, during the late war, to attempt a similar enterprise with the troops of the Island only.

That no time might be lost after this decision was taken, I dispatched the Encounter to Captain Honeyman, who was cruising off the mouth of the river, to warn him of the probable arrival of the Ocean; and the Narcissus was sent to St. Helena with the Letter No. 1. to the Governor; and although I have not yet received an official answer, yet

* Diadem, Raisonable, Diomede, Narcissus, Encounter;—Walker, Triton, Melantho, Ocean, Willington, transports.

he has ordered one hundred and fifty infantry, and one hundred artillery-men with two howitzers, to join the expedition; and as I trust they will be embarked either this morning or early to-morrow morning, I hope we shall be able to sail immediately in the execution of this service.

I am, &c. &c. &c.

HOME POPHAM.

Since writing the above, I have received the Governor's answer, No. 2, to which I have annexed my answer, No. 3, for their Lordships' information.

Inclosure (No. 1.) in XVI.—*Copy of a Letter from Sir* HOME POPHAM *to the Governor of St. Helena, dated April 23d*, 1806.

SIR, Diadem, at sea, 23d April, 1806.

ON the day I sailed from the Cape, I requested Sir David Baird to give to the care of General Anker, the late Governor of Tranquebar, a dispatch for your Excellency, of which the inclosed is a duplicate.

The uncertainty, however, of General Anker's touching at St. Helena, accompanied with other circumstances, have induced me to bear up with the squadron, for the purpose of facilitating the execution of those measures which I have requested you to adopt, in co-operation with Sir David Baird and myself, for the public good.

I have no doubt but your Excellency is aware that, during the last war, preparatory steps were taken at St. Helena for a similar attempt on the possessions of the enemy in Rio de la Plata, by the forces from your government; and though the various motives of policy which then existed for the execution of such an enterprise do not appear to me to be in any degree lessened, yet the

of affairs on the Continent, an additional claim to the energies of all Officers, who have the means of opening any new channel for the consumption of their goods.

Under these considerations, and the strong expressions of zeal conveyed in your *Letter of the 27th November*, 1805, founded, I presume, on ample authority from the Court of Directors, do I rest my confidence that you will give every military aid to this expedition that you possibly can, consistently with the safety of the Island under your government.

I trust that, in a few hours after you receive this, I shall have the honour of presenting General Beresford to your acquaintance; and I have no doubt that when the object of this expedition is promulgated in the island, your greatest difficulty will be resisting the voluntary offers of the troops—for, however popular this enterprise may be in England for all its commercial relations, nothing could exceed the anxiety which was testified by every soldier at the Cape to be employed on it, when its destination was first made public.

I have, &c.

Hon. R. Patton, &c. &c. &c. HOME POPHAM.

Inclosure (No. 2.) in XVI.—*Copy of a Letter from the Governor of St. Helena to Sir* HOME POPHAM, *dated 1st May*, 1806.

To his Excellency Sir HOME POPHAM, K.M.
&c. &c. &c.

SIR,

IN consequence of your letters to me, dated the 13th and 23d April, applying for the co-operation of this government, in an expedition concerted and planned by Major-General Sir David Baird and your Excellency, holding the authority of Commander-in-Chief of his Ma-

jesty's Forces at the Cape of Good Hope, for an attack upon the Spanish settlements at Rio de la Plata, upon the information you had received of the defenceless state of Monte Video, Buenos Ayres, and their dependencies, the Governor and Council, placing confidence in the statement you have given of the facility with which this important measure may at present be carried, and in the view of forwarding the success of his Majesty's arms, have determined to co-operate with you and Brigadier-General Beresford, by sparing from this garrison one hundred artillery men, with two howitzers, &c. and one hundred and fifty rank and file infantry, with their appropriate officers, under the command of Lieutenant-Colonel Lane, the Lieutenant-Governor of this Island, relying upon your representation, that the service upon which they are to be employed will be speedily accomplished, and with an express stipulation, which is required on your part and that of Brigadier-General Beresford, that the detachment of St. Helena troops, forming so material a part of this garrison, shall not be detained longer than after the capture of Monte Video and Buenos Ayres, when they are immediately to be sent back to this island. I have the honor to subscribe myself,

SIR,

Your most obedient, humble Servant,

St. Helena, 1st May, 1806. ROBERT PATTON.

Inclosure (No. 3.) in XVI.—*Copy of a Letter from Sir* HOME POPHAM *to the Governor of St. Helena, dated May 1st*, 1806.

SIR, Diadem, St. Helena, 1st May, 1806.

I HAVE the honor to acknowledge the receipt of your letter of this day's date, replying to mine of the 13th and 23d ultimo, on the subject of a co-operation from your

Government, by such a force as you could reasonably spare, for the intended attack upon the enemy's possessions in the Rio de la Plata.

I made this application on the same principle that induced Lieutenant-General Sir David Baird and myself to undertake the enterprise in question, which was the intelligence we had received of the defenceless state of Monte Video and Buenos Ayres; and I return you my thanks for the assistance you have given, in sending a proportion of Infantry and Artillery, under the command of Lieutenant-Colonel Lane.

As you require that General Beresford and myself should enter into a stipulation to send back the Company's troops when Buenos Ayres and Monte Video are captured, I have consulted the General on that subject, who very properly observes, that, on the first moment of our success, it might be highly imprudent to detach any part of our force; but you may rest assured that the troops of the Island shall not be detained one day after they can be spared from the service for which they are requested.

I have the honour to be,

SIR,

Your most obedient, humble Servant,

HOME POPHAM.

No. XVII.—*Copy of a Letter from Sir* HOME POPHAM; *dated July* 19, 1806; *with two inclosures.*

SIR, Diadem, Rio de la Plata, July 19, 1806.

I HAVE the honour to enclose to you, for the information of the Lords Commissioners of the Admiralty, copies of the letters I wrote by the Melantho transport, which ship I dispatched to the Cape, with the account of our success at this place.

As I knew that General Beresford had pressed, in the

sending a reinforcement to this river, without a moment's loss of time, I took the liberty of writing two separate letters, in case there should be any officer, senior to me, at the Cape of Good Hope; and I hope the tenor of both those letters will meet their Lordships' approbation.

I have the hónour to be,

&c. &c. &c.

(Signed) HOME POPHAM.

To William Marden, Esq. &c. &c. &c.

Admiralty.

Inclosure (No. 1.) in XVII.—*Copy of a Letter from Sir* HOME POPHAM, *dated July* 5, 1806.

SIR, Buenos Ayres, July 5, 1806.

I HAVE the honour to enclose, for your information, a copy of the letter which I wrote to the Secretary of the Admiralty, on the subject of my intention to proceed to Rio de la Plata, where we arrived, without any material occurrence, on the 10th of last month; though, from the difficult and intricate navigation of the river, it was not till the 26th that we got near Point Quelmes to land the troops; this position is three leagues from Buenos Ayres, which it was determined to attack first, as the capital of the country.

On the 28th we succeeded in obtaining possession, by the able disposition of General Beresford, and the gallantry of his troops.

We are now in a state of perfect tranquility, and although we are in complete possession of Buenos Ayres, which is extremely quiet, *yet we cannot move to further offensive operations, the principle of which would be Monte Video, without some reinforcements:* I therefore hope, Sir, you will consider our situation—the advantageous conquest we have made for the good of the country—*and of what importance the least reinforcement would be to us:* a

frigate, and one or two sloops of war, or armed vessels, would materially assist us, provided you cannot spare a greater force; and I do assure you, Sir, that a moment is of the greatest consequence in dispatching such, or whatever force you may be able to spare; and from your present knowledge of our situation, I trust it will be unnecessary for me to urge any thing further on that subject.

As I have not yet had time to write my official letter to the Admiralty, I cannot send you a copy of it; but as General Beresford has written very fully to Sir David Baird, *I am sure he will communicate to you any particular of which you may be desirous to be informed.*

I, however, take the liberty of enclosing the letter I write, to any officer who may be junior to myself, as well as the directions I have given to the principal Agent of Transports, the Naval Officer, and Agent Victualler.

I have the honour, to be,

&c. &c. &c.

(Signed) HOME POPHAM.

To the Commander-in-Chief, or Senior Officer of his Majesty's Ships and Vessels, at the Cape of Good Hope.

Inclosure (No. 2.) in XVII.—*Copy of a Letter from Sir* HOME POPHAM; *dated July* 5, 1806.

SIR, Buenos Ayres, July 5, 1806.

HAVING considered it expedient to apply the energy of the squadron under my command, in conjunction with a detachment of Sir David Baird's army, under General Beresford, to an attack on the enemy's territories in Rio de la Plata, in which we have so far succeeded as to obtain complete possession of Buenos Ayres, and its dependencies, I think right to direct, *that you lose no time in dispatching all the naval force at the Cape to this place, except* such

part as Sir David Baird and yourself may think absolutely necessary to detain there, taking into consideration the capture of this place, and our present situation.

We cannot proceed to further offensive operations without a reinforcement: not from any idea of failing; on the contrary, we are certain of beating the enemy at Monte Video; *we only want force to assist us in taking possession.* As small craft is of the most material consequence, the sooner the Protector, Rollo, or any other is sent, the better; and let each take a few casks of Irish provisions, particularly pork, for fear we should fail in our expectations of salting beef; but on this subject I have written particularly to the Agent Victualler.

The best track to pursue in coming here, is to run directly into the heart of the trades, to make your westing; probably it may be necessary to go into 20. Keep in the trades till you are within 20 leagues of the coast, when you are almost certain of meeting northerly winds.

When you come into the river, the parallel of thirty-five ten is a good one to keep in till you get into twelve fathoms, when you should keep a few miles further to the southward, to avoid the English Bank; though the probability is, that you will fall in with some of our cruisers before you get so high up.

I recommend, in the strongest manner, the most *active exertions to dispatch any naval force to us, in our present anxiety to pursue our object of gaining Monte Video.*

I have the honour to be,

&c. &c. &c.

(Signed) HOME POPHAM.

To the Captain or Commander of any
of his Majesty's Ships and Vessels,
junior to Sir Home Popham, at the
Cape of Good Hope.

No. XVIII.—*Copy of a Letter from Sir* GEORGE SHEE, *Bart. to* WILLIAM MARSDEN, *Esq. dated Feb. 20th*, 1807; *with two Inclosures.*

SIR, Downing-Street, 20th Feb. 1807.

I HAVE Mr. Secretary Windham's directions to transmit, agreeably to your desire, copies of two letters from Major-General Sir David Baird to Lord Castlereagh, dated Cape of Good Hope, the 14th of April and 5th of May, 1806; stating his reasons for sending a force against Buenos Ayres, and giving an account of the arrival of a French frigate in Simon's Bay, and of her escape from thence on the 30th of April.

I am, Sir,

Your most obedient humble Servant,

William Marsden, Esq. &c. GEORGE SHEE.

Inclosure (No. 1.) in No. XVIII.—*Copy of a Letter from Major-General Sir* DAVID BAIRD, *to Right Hon. Lord* CASTLEREAGH, *dated April 14th*, 1806.

MY LORD, Cape Town, 14th April, 1806.

The intelligence lately obtained from a variety of sources of the present defenceless state of the Spanish settlements at Rio de la Plata, has led me upon very mature consideration to detach a small force, with the view of attempting the possession of them, in conjunction with the squadron under the command of Sir Home Popham.

In forming this determination, I am perfectly aware, that both the Commodore and myself have taken upon ourselves a high responsibility; but the great importance of the object, in a national point of view, will I trust bear us out, and excuse us to his Majesty for undertaking a service without having previously received his special and gracious commands.

The weak and defenceless state of the enemy certainly held forth to me a very strong temptation; but on this

ground alone, I should not be justified in the step I have taken.

The possession of a settlement on the coast of South America, I consider pregnant with incalculable advantage, as well to our nation at large, as to this colony in particular; and I need not point out to your Lordship the peculiar benefit to be derived from its opening, in our hands, a new and profitable channel for the exportation of our home manufactures, which it has been so much the study and wish of the present French government to obstruct and diminish.

The certainty that Admiral Willeaumez had prosecuted his voyage to India, and cannot for some months make any attempt to interrupt the tranquillity of this colony, coupled with the increasing strength and discipline of the Cape regiment, was an additional argument with me for venturing to spare a part of the forces under my orders on a distant enterprise.

It is, I believe, the intention of Sir Home Popham, upon the successful termination of this undertaking, to return himself to England; I therefore beg to refer your Lordship to him for a more circumstantial detail of the intelligence, motives, and circumstances, which guided our resolution.

As I deemed it very essential on every account, that the command of the detachment should be intrusted to an officer of rank, and of tried ability, judgment, and zeal, I decided to select Brigadier-General Beresford, whom I know to possess those several qualifications in an eminent degree.

I inclose for your Lordship's information, a copy of the instructions I thought it necessary to give him, and I presume to hope they will meet with his Majesty's approbation.

In case of success, I consider it will be proper that

General Beresford should take upon himself the office of Lieut. Governor; and have accordingly directed him to assume that situation, and to draw whatever salary and allowances may have been enjoyed by the Spanish governor, his immediate predecessor, until his Majesty shall be graciously pleased to make known his pleasure.

I have likewise conceived that in discharging his civil and military duties it would be right to invest him with a higher military rank than he is here known to possess; and having at the same time reason to think his Majesty has already been pleased to appoint him a Major-General in his army, I have been induced to desire he should assume that rank in South America only, upon landing there with the troops under his command.

As I can scarcely entertain a doubt of his success, I take the liberty of suggesting to your Lordship the expediency of his being immediately reinforced, if his Majesty shall decide to retain possession of the places which may surrender to him. Dragoons can be expeditiously and well mounted in South America, and I should think would be of infinite use in that country.

I also beg leave to submit the propriety of replacing, without delay, the force which has been detached from this colony with Brigadier-General Beresford.

The absence of that officer, and the return of Brigadier-General Ferguson to England for the recovery of his health, render it indispensable to send out one or more general officers to supply their places; and were I permitted on this occasion to express an opinion in favor of any individual, I should not hesitate to point out Sir Samuel Achmuty, as an officer qualified in every respect to fill the situation of the second in command in this colony.

I have the honor to forward, for your Lordship's infor-

mation, a copy of the embarkation return of Brigadier-General Beresford's detachment, which sailed yesterday.

General Anker, of his Danish Majesty's service, and late the governor of Tranquebar, undertakes to hand this dispatch to your Lordship. As he is perfectly the Englishman, I have had no hesitation in acquainting him with General Beresford's destination, and I take the liberty of recommending him as a most respectable gentleman to your Lordship's acquaintance and attention.

I have the honor to be, &c.

To the Right Hon. Viscount Castlereagh, &c. DAVID BAIRD.

A True Copy.

(Signed) GEORGE SHEE.

Inclosure (No. 2.) in XVIII.—*Copy of a Letter from Major-General Sir* DAVID BAIRD, *to Right Hon. Lord* CASTLEREAGH, *dated May 5th*, 1806.

MY LORD, Cape Town, 5th May, 1806.

I HAVE the honour to acquaint your Lordship, that the Cannonier French frigate, formerly his Majesty's ship Minerva, stranded near Cherbourg at the commencement of the present war, being ignorant of our having possession of this colony, anchored in Simon's Bay on the 30th ult. and sent a Lieutenant on shore, who, with his boat and crew, was captured by a party of the garrison disguised and stationed at the beach for that purpose.

As soon as this was done and the frigate had furled all her sails, Major Tucker, the senior officer at Simon's Town, directed the British colours to be hoisted, and the batteries to fire upon her with red hot shot: unfortunately she had cautiously anchored at such a distance from the shore, that only one or two guns could bear upon her with

effect. The fire, however, from these was sufficient to make her cut and put to sea again with the greatest precipitation, leaving two anchors and cables behind. Had she luckily approached a little nearer, there is reason to think, if she had not been set fire to, or compelled to strike, she would have sustained considerable damage, as the guns, howitzers, and mortars, I have lately mounted for the defence of Simon's Town could have opened, from various points, a heavy and destructive fire upon her.

I learn from the Lieutenant and boat's crew, that the Cannonier sailed from Cherbourg, on the 13th of November last, for the Isle of France, and from the latter place for this, with dispatches for General Jansens, a few weeks ago, leaving there the Piedmontese and Servillante French frigates. On her passage hither she fell in with a British convoy of 13 sail, and engaged the man of war in charge of it, whom she supposed to be a 74, for nearly two hours; and after having four men killed and twelve wounded, escaped, in consequence of having shot away her antagonist's mizen top-mast.

I am induced to think this frigate will proceed to Europe, and sincerely hope some one of our cruisers will be fortunate enough to intercept her. Neither during her passage out, nor from the Isle of France to this place, did she make any capture except a small Swede; and she is he same ship the Raisonable, Capt. Rowley, chased and nearly captured about three months ago off Cape L'Aquillas.

I have further to inform your Lordship, that the brig Fortuna, under Mecklenburg colours, arrived in Table Bay a few days ago, bound to this place and Batavia. For the reasons contained in the statement I have the honor herewith to forward to your Lordship, I have felt it my duty to detain this vessel; and her cargo being principally of a

Copies of the Fortuna's papers are transmitted by this opportunity to his Majesty's Court of Admiralty for adjudication, together with a detailed account of all the circumstances relating to her, supported by the necessary affidavits. Should the vessel and cargo, or either, be condemned, I request your Lordship will humbly solicit his Majesty in my name to be graciously pleased to bestow them as a prize to his land troops now serving here, no vessel of war of any description being present, and a party from this garrison having boarded and taken possession of the Fortuna in very tempestuous weather, at the hazard of their lives.

The dispatches brought by this vessel from the Batavian government are not of much importance. I should otherwise, deem it my duty to transmit copies of them to your Lordship: much was left to be communicated verbally by Mr. Dozi, who declines giving any information.

The only circumstance necessary to be reported, is an order to the governor in council here, to receive any French troops which may arrive in a distinguished manner, and to yield the command of the French and Batavian forces to the senior officer of the former, although of inferior rank. An inference may, I think, be fairly drawn from this circumstance, that the French meditated to send out a body of troops for the purpose of either taking possession of the Cape, or of forming a conjoint expedition against St. Helena or some of our Asiatic settlements.

I forward a duplicate of my last dispatch to your Lordship of the 14th ult. and have the honor to be, &c.

(Signed) D. BAIRD, Maj. Gen.

Right Hon. Lord Viscount Castlereagh.

A True Copy.

(Signed) GEORGE SHEE

Then Sir HOME POPHAM produced the original Letter, of which No. I. dated the 25th July, 1805, is a copy, and the original Instructions to Sir David Baird, dated 29th July, 1805, enclosed therein: also the original Letter of which No. II. is a copy, dated 2d August, 1805, from Mr. Barrow to him, and admitted them as evidence.

Sir HOME POPHAM also admitted his signature to his several Letters which had been read to the Court, with their several inclosures.*

The Prosecution being closed, Sir HOME POPHAM was called on for his Defence; and he requested to be allowed time until to-morrow morning.

The Court adjourned until eleven o'clock on Saturday morning.

SECOND DAY.

SATURDAY MORNING, Eleven o'clock.

The Court met according to adjournment.

The Court asked Sir HOME POPHAM if he was ready to proceed on his Defence?

Sir HOME POPHAM then read a paper writing, as follows:

MR. PRESIDENT,

I BEG leave to state to you and the Honorable Members of this Court, that I have used my utmost endeavours, since the adjournment of yesterday, in preparing my defence, in order to have laid it before you this day; but, from the variety

* No evidence was given to the Papers No. 3, 4, 5, and 18, or to their Inclosures.

of new documents and papers most unexpectedly introduced into the charge, and to meet which I was not entirely prepared, I have found it impracticable, with all my exertions, to complete my defence, as I anxiously wished to do. I am therefore under the necessity of craving the indulgence of the Court until nine o'clock on Monday next. I can assure you, Sir, that what I am obliged to solicit entirely arises from the great additional matter in the charge, as adduced yesterday, and that which I received in London; and I beg leave to put the latter into the hands of the Judge Advocate; also his letter to me, enclosing the charge on which I am now tried.* I have also to request the Court to call for a Letter addressed to Mr. Marsden, a copy of which I have now in my hand.* When these are read, I trust the Court will not attribute to me this trifling delay.

In order to save the time of the Court on Monday, I beg leave to suggest the reading, now, several letters, which will form part of my defence.

(Signed) HOME POPHAM.

Copy of the Order intended to be given.

By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

WHEREAS by our order, dated 29th July, 1805, Sir Home Popham, then Captain of his Majesty's ship Diadem, was directed to take under his command his Majesty's ships Belliqueux, Raisonable, Diomede, Narcissus, and Leda, the Espoir sloop, and Encounter gun-brig, for the purpose of capturing the enemy's settlements at the Cape of Good Hope, in conjunction with the troops under the command

of Major-General Sir David Baird; which settlements were surrendered to the ships and troops afore-mentioned, in the month of January, 1806: And whereas it appears by letters from the said Sir Home Popham, to our Secretary, dated the 13th and 30th of April following, that, with the view to attack the Spanish Settlements in the Rio de la Plata, for which attack he had no direction or authority whatever, he did withdraw from the Cape the whole of the naval force which had been placed under his command for the sole purpose of protecting it, thereby leaving the place which it was his duty to guard, not only exposed to attack and insult, but even without the means of affording protection to the trade of his Majesty's subjects, or of taking possession of any ships of the enemy which might have put into any of the bays or harbours of the Cape, or parts adjacent; all which he the said Sir Home Popham did, notwithstanding he had received previous information of detachments of the enemy's ships being at sea, and in the neighbourhood of the Cape, and notwithstanding he had been apprised that a French squadron was expected at the Mauritius, by which he informed us by his letter to our Secretary, dated the 9th of April, 1806, only four days prior to his departure from the Cape for the Rio de la Plata.

And whereas it appears to us, that a due regard to the good of his Majesty's service imperiously demands, that so flagrant a breach of public duty should not pass unpunished: And whereas, by our order, dated the 28th of July, 1806, Rear-Admiral Stirling was directed to send the said Sir Home Popham to England, which he has done accordingly: And whereas, Sir Home Popham was, on his arrival, put under an arrest, by our order, and is now at Portsmouth awaiting his trial: We send, herewith, the necessary paper for the support of the charge, and do hereby require and direct you forthwith to assemble a Court

Martial; which Court (you being the president thereof) is hereby required and directed to enquire into the conduct of, and to try the said Captain Sir Home Popham for the offences with which he is charged accordingly.

Given under our hands, &c.

The Court, having taken into consideration your application to be allowed till nine o'clock on Monday morning to prepare your defence, have consented to your request; but, as the principal reason you have given for asking for more time is the introduction of a great variety of new matter into the charge, the Court think it necessary to observe, that between the copies of the intended charge, as sent by the Secretary of the Admiralty, and that delivered to you by the Judge Advocate, there is no materiai difference; that no new matter has been introduced, the only difference between them consisting in the insertion of a List of Papers intended for the support of such charge; and the Court consider it to be more regular to hear your defence, before any other documents shall be produced and read.

The Court adjourned until Monday morning, nine o'clock.

THIRD DAY.

Monday Morning, Nine o'Clock.

The Court met, according to adjournment; when Sir Home Popham proceeded to read his

DEFENCE.

Mr. President,

After having devoted the greater part of my life to the Service of my King and Country, I am brought before you, and the other Members of this Honourable Court, to vindicate my conduct upon a charge as extraordinary in its nature, and unprecedented in the form and mode in which it is preferred, as perhaps was ever submitted to the investigation of a Court Martial.

I am brought to trial by that superior authority to which every Officer in his Majesty's Naval Service looks up for reward and protection, for having zealously, and to the best of my judgment and abilities, employed, within the limits of my station, the means placed at my disposal in making a successful attack on a possession belonging to the enemy, instead of suffering the squadron I commanded to remain inactive.

I am charged with having withdrawn from the Cape of Good Hope the naval force with which I had completely fulfilled the orders I had received for its capture, and with having left that conquest unprotected; though, in the judgment of the very able and distinguished Military Officer commanding there, it was in perfect security; with having acted contrary to the information I had received, though that information

ground-work of my proceedings; and in the conclusion of the accusation, my conduct is prejudged, and circumstances which, in ordinary cases, are stated as facts whence the Court are left to draw the inference of guilt or innocence, are against me charged to constitute a flagrant breach of public duty; and, contrary to that universally-acknowledged principle of justice, which presumes every man innocent till he is proved to be otherwise, punishment, instead of trial and investigation, is, I humbly conceive, for the first time in the annals of the British Navy, imperiously demanded from the high tribunal, before which I have now the honour to appear. But, Sir, though in the language, I may perhaps say the prejudices, of those who prefer this charge against me, I am sent before you to receive at your hands not justice but punishment, I wish to be understood as alluding to, rather than complaining of, this proceeding; because, if it be an irregularity, it concerns the Members of this Honourable Court, and the whole Navy, more than it does myself, as affecting the dignity and independence of the Trial by Court Martial, upon which the honour and protection of the service so much depend; and because, as far as I am personally concerned, the anxiety which I feel to enter on my defence, and vindicate my character from the imputations which are cast upon it, would not allow me (if I had the opportunity) to avail myself of any objection to the form or mode of proceeding. To the subsequent part of the charge, detailing and commenting on the documents which are referred to in support of it, I also wish to call the attention of the Court; as I am confident it will appear that many of those comments are not justified by the documents professed to be recited; and the Court will have perceived that many of those letters and details were no evidence against me, and that many which were so read, as part of the charge, were not attempted afterwards to be proved at all:—the production of those documents, or rather the reading of them, as part of the charge, makes it necessary that I should comment on them and their supposed effect; and I sincerely lament that this necessity compelled me most unwillingly to ask the indulgence of the

I am not disposed, Sir, to complain of those who have directed this investigation, for having brought me before you; for I am aware that prejudices have been excited against me, which I can in no way so effectually encounter or repel as by this public inquiry, and the favourable result which I anticipate. I will not impute to any persons in authority, because I am unwilling to believe it possible that any orders could have occasioned the unusual treatment and indignities I was subjected to in the manner in which I was superseded in my command, and in the way which I was obliged to come home; yet I cannot but think, Sir, that I have some little right to complain of not having received any intimation, before I left the Rio de la Plata, of the probability or possibility even of my conduct being submitted to this investigation: the silence of the Board of Admiralty in this respect has deprived me of some material witnesses, and accident only has furnished me with others, most important on a subject in which my character and feelings are most deeply interested. I cannot but suspect that the conduct of the Board of Admiralty must have originated in some change of opinion. All the information, and every fact, on which the judgment of the Board, as to my conduct, was to be formed, had long been before them. The re-capture of Buenos Ayres could not have produced, on high and honourable minds, any such change of opinion; but that some change did take place, from causes I am unable to develope, is obvious from the following official letter of the Secretary of the Admiralty:—

"SIR, Admiralty-Office, 25th September, 1806.

I received, on the 12th instant, by Capt. Donelly, and lost no time in laying before my Lords Commissioners of the Admiralty, your letter of the 6th of July, acquainting me, for their Lordships' information, that the city of Buenos Ayres, and its dependencies, had surrendered to his Majesty's arms, after a slight resistance to the advance of his Majesty's troops under the command of Brigadier-General Beresford, and detailing the operations conductive to this object on the part of his Majesty's

naval forces under your direction:—In answer thereto, I have their Lordships' commands to acquaint you, that, although they have judged it necessary to mark their disapprobation of a measure of such importance being undertaken without the sanction of his Majesty's Government, and of your having left the station which it was your duty to guard without any naval defence; they are nevertheless pleased to express their entire approbation of the judicious, able, and spirited conduct manifested by yourself, the officers, seamen, and marines employed under your orders on the above occasion, and which you (or the senior officer on the spot) will communicate to them in a proper manner accordingly.

I am, &c. &c.

(Signed) WM. MARSDEN."

"Commodore Sir Home Popham,
&c. &c. &c."

Disappointed as I naturally felt at finding that the destination of the force under my command met with disapprobation, instead of approval, I was in some measure consoled by their Lordships' commendations upon the manner in which the expedition had been conducted; and punished as I must be considered to be by their expression of disapprobation, and still further by being superseded and recalled, I could not suppose that their Lordships meant to bring me to this trial. But I will not occupy the time or attention of this Honourable Court in tracing the causes that may have led to it, although they might not be considered as wholly irrelevant to the consideration of the charge; nor will I enter into any circumstances connected with former inquiries, as much of a political as of a personal nature, before another high tribunal, however gratifying it may be to me to reflect on the ultimate result; because those circumstances are well known to every Member of this Honourable Court, and because, whatever may have been their influence on the subsequent events of my life, they are not here fit sub-

the highest ornaments of my profession, I am well satisfied that no party or political feelings will operate to my prejudice; and I should not deem it respectful to such a Court collectively, or to the High and Honourable Members of it individually, to attempt, by any comments on the effect of political prejudices and party spirit, to produce any undue impression in my favour. I wish to be tried, and to stand or fall in the opinion of this Court, of my profession, and of my country—by my conduct as an officer; and it is in the firm conviction that I shall be so tried and so judged that I present myself before you with confidence as to the result. The nature of my case, Sir, and the extraordinary circumstances connected with it, will unavoidably compel me to make some observations and comments which may appear to be strong, both in their effect and application. I have ever been alive to the respect which is due to rank and station, and no man is more sensible than I am of the deference to which all legal powers and superior authorities are entitled; it is therefore my wish and determination to regulate my defence by those feelings; and I entreat the Court therefore to believe, that every observation which may appear to have a contrary tendency is drawn from me by a painful necessity imposed upon me by the charges exhibited against me. But I will not detain you longer by general observations; the very peculiar situation in which I am placed will, I hope, justify me to you, Sir, and the Honourable Members of the Court, in making these preliminary remarks; and I will now therefore proceed to comment upon the charge, the foundation on which it rests, and the grounds on which I rely upon the justice of this Court for my honourable acquittal.

I will first consider the nature of the charge generally, which is, that having been intrusted with a force for the capture of the Cape, and having succeeded in that object, I did, with a view to an attack on the Spanish settlements in the Rio de la Plata, for which, it is said, I had no direction or authority whatever, withdraw the whole of the naval force from the Cape, under circum-

That I had no positive directions or express authority for such a destination of the force under my command I readily admit; for my instructions, which have been read to the court as part of the charge, contain no direction whatever, in relation to my future conduct after the capture of the Cape.—It cannot be contended therefore, and is not contended, nor stated in the charge, that I acted CONTRARY to orders. What, therefore, is the fair construction of the letter and tenor of my orders? What were the objects, which it was my duty as a naval officer, to keep in view?—I admit on the fullest extent, that my first object was to be satisfied, that the captured settlement was in a perfect state of security from attack; the next, it will not, for it cannot be denied to me, was the disposal of the force under my command for the good of his Majesty's service, and the further annoyance of the enemy within the limits of my command.

The first principle of naval and military service is obedience to the orders of the government, directing the naval and military operations of the country, on a general view of their different bearings and effects; for it is to the superintending power only that all the relations of the warlike operations of a state to each other can be known; but, though this ever has been and ever must be the first principle of naval and military service, numerous instances have occurred, in which commanding officers of all ranks, from those who have held the most distinguished situations down to the commanders of the smallest vessels, have not only exercised an enlarged discretion without orders, but even deviated from, and in many instances acted against, express orders for the good, as they conceived, of the service; and for which, so far from having been charged with misconduct, they have met with approbation; or when tried by a court martial have been honourably acquitted.

Unfortunate, indeed, would it be for the naval profession, and still more unfortunate for the country, if such instances had not occurred, and had not been so considered: some of the most important acquisitions of the country, some of the most distin-

guished exploits, some of the most judicious and spirited measures that have given celebrity to our profession, and marked the talents of those to whom we look as the brightest examples in it, owe their origin to such an exercise of discretion.

To the Members composing this Honourable Court, the majority of whom have already filled, and all of whom are likely to fill, high commands on distant stations, it is scarcely necessary to point out the combination and the variety of unexpected circumstances which may occur, and imperiously dictate the necessity of advantage being taken of the moment in promptly acting against an enemy. Circumstances may be such that delay may lead only to discomfiture or disgrace; and that no time could be spared for consulting the superior authorities at home, or waiting for their orders.

Had such extreme caution, such rigid regulations, as seem to produce the present accusation, been hitherto enforced, that daring spirit of enterprise, that prompt and decisive energy of action which have raised the British name and character to so proud and enviable a summit of distinction, would, not only have been checked, but in a great measure annihilated; and the annals of our history would not have been graced by so many gallant achievements, which, though undertaken without orders, have in general been eminently conducive to the interest and glory of this country.

Numerous precedents exist which fully illustrate the truth of this position; some of them may probably occur to the recollection of the members of the Court. Amongst others which present themselves to my memory at this moment, I shall beg leave to mention the *coup de main*, which put the British crown in the possession of Gibraltar. Admiral Sir George Rooke had no orders for undertaking that bold enterprise, nor was he arraigned by his superiors at home for having exercised his discretion on that occasion. On the contrary, her Majesty Queen Anne did every honour to his spirited conduct.

In the American war, Admiral Sir Peter Parker and General Sir John Dalling, the then naval and military commanders at

Jamaica; concerted an expedition against the Spanish settlement of Omoah, which was to a certain degree successful. No blame was understood to have attached to either of those officers for having directed this operation without orders.

At the beginning of the late war, in 1793, Lord Hood entered Toulon, and afterwards attacked Corsica, not only without orders, but in the latter case against the opinion of the general and other military officers; who therefore refused to co-operate with him: he trusted to his own resources of talent, exertion, and perseverance, and succeeded in his attack. He apologizes in his public letter for having undertaken these operations, and Toulon and Corsica were ultimately evacuated, in consequence of our military force being inadequate to their preservation; and yet, neither this exercise of discretion in the first instance, nor the subsequent misfortunes which lost those places to the British arms, were ever made the subject of imputation on Lord Hood as an officer, or of any criminal charge against him, or of censure; but on the contrary, his conduct met with the most unqualified approbation of government and his sovereign, and the highest honour and rewards.

In 1796, Lord St. Vincent (then Sir J. Jervis) sent the heroic Nelson to attack Teneriffe, in consequence of information which he received, that two ships from the Rio de la Plata had landed their treasure there. Every person is acquainted with the issue of that expedition which lost to the country so many brave men, and in which Lord Nelson himself was severely wounded. Notwithstanding the disastrous result of this attack, which was undertaken without orders from any superior authority, and I believe I am warranted in saying out of the limits of Lord St. Vincent's command, no censure was ever understood to have passed on the conduct of that officer in directing it: certainly no judicial inquiry or public censure ever followed the enterprise.

Another instance I think it necessary to observe, of the exercise of discretion, which is afforded to me by the treaty of El Arisch, entered into by Captain Sir Sidney Smith with General

of the latter, from Egypt to France. This treaty, as is well known, involving as it did great political interests, was not approved of by the British government, and though it had been regularly signed and exchanged by Sir S. Smith, orders were sent out to Lord Keith to put an end to that treaty, and to prevent its being carried into execution; and although Sir S. Smith had the mortification of finding his well-meant exertions disapproved of, and cancelled at home, though they were the source of much embarrassment and uneasiness to the government at the time; and above all, though he had no separate command, but was immediately under Lord Keith, then commander in chief in the Mediterranean, to whom the means and opportunity of reference, as compared with the present case, were short and easy:—yet, under all these circumstances, the conduct of Sir Sidney Smith in this instance was never submitted to a Court Martial.

That illustrious character, Lord Nelson, has also afforded to the navy another strong example on the exercise of their discretionary power, by leaving his station in the Mediterranean to go to the West Indies, under circumstances which I cannot so forcibly state, as by quoting his own words, in a letter from him, since published, to Mr. Simon Taylor, of Jamaica, dated Victory, off Martinico, June 10, 1805. "I had no hesitation in forming my judgment, and I flew to the West Indies without any orders, but I think the ministry cannot be displeased." Leaving, however, it must be recollected, (if that judgment had been erroneous) his station without a single ship, and many vulnerable points unprotected. It is unnecessary to state, that general and public approbation followed this bold and judicious exercise of discretion.

Captain E. Thompson, of the Hyæna, with whom I served three years as midshipman, exercised his own discretion, in coming to England from the West Indies with a convoy, without any orders for that purpose. He was tried in consequence of a letter written by Sir Samuel Hood, to the then Secretary to the Admiralty, in which that admiral states, that nothing which Captain Thompson had written, can induce him

(Sir S. Hood) to approve of his (Captain Thompson) going to England without orders. Sir Samuel, in his letter, repeats the expression in these words:—"I say, without orders, as he had none from me;" and finally concludes his letter of complaint to the Admiralty thus: "It is my duty to state facts as they are represented to me, and it remains for their lordships to decide upon the propriety, or impropriety, of a Captain's going such lengths *without* orders." Nothing is more apparent, or can be much more strongly expressed, than the impression of misconduct on the part of Captain Thompson, which predominated in Sir Samuel Hood's mind, at the moment when he wrote the preceding letter of complaint; yet the Admiralty Board of that day, notwithstanding the unfavourable impression certainly intended to be conveyed against Captain Thompson by Sir Samuel Hood, did not, as in my case, prejudge Captain Thompson to the Court, and term his conduct, *a flagrant breach of duty that should not pass unpunished*, but simply directed the Court to inquire into the conduct of the said Captain Thompson, in having left Barbadoes, and come to England, without orders, and to try him for the same accordingly.

Captain Thompson was tried for his supposed offence; his conduct was declared to the Court to have been necessary, judicious, and highly meritorious, and he was honourably acquitted.

It is sufficient for me to have shewn by these instances, that cases must occur in which the exercise of such a discretion, in a commander, even to an extent far beyond what can, under the most severe and forced construction of my orders, be imputed to me, is not only justifiable, but oftentimes even highly meritorious. Numerous other instances might be adduced, with which I will not trouble the Court. I will, however, refer to another case, which particularly applies to the subject of the present inquiry. The Court will have observed, that in my letters and correspondence with the Governor of St. Helena, I allude to a former intention of making an attack on the settlements in the Rio de la Plata from St. Helena.

I am able to prove, that such an expedition was discussed and considered by Lord Macartney and Admiral Christian, on the suggestion of Governor Brooke, of St. Helena, and that without any orders. The objection of having no orders did not occur to either of them, the object being to annoy the enemy within the limits of Admiral Christian's command.

Before I quit this part of the subject I must observe, that it is impossible to confine that wise and salutary discretion, which must in all cases be left to commanders on distant foreign stations, within any precise and definite limits. The conduct of an officer, so circumstanced, must in such cases be tried by the actual situation in which he was placed at the time, not by subsequent events or facts, which could not be known to, or suspected by him, much less by change of opinion, arising from political changes in the superior authorities. This knowledge of prior and existing circumstances, and of the wishes of the government under which he received his orders, and supposed himself to be acting, as to any such enterprise; and the motives which these circumstances point out, as naturally leading him to such an exercise of discretion, must also be adverted to. It must likewise be obvious, that an officer commanding on a distant foreign station, finding a force at his disposal, not wanted for any immediate object within the letter of his orders, and wishing for the honour of his country, and the approbation of those by whom he has been intrusted with a command, to use that force most advantageously to his country, must be governed in his choice of the object in the extent to which he believes he may venture on such a disposal of his force, without orders, or even in some instances, in deviation from his orders by his knowledge of the sentiments of the Government.

If an officer has attained the highest rank in his profession, or has for years held high commands; if he has obtained, by his services, the highest honours and most distinguished rewards; if he has been employed on eminent stations, politically connected with his profession; and been accustomed, in such situations, to direct and command others; and has, from any of these causes,

stood high in the confidence of Government and his country;—or if in an inferior rank, and without any of these claims to attention, he has had, like myself, the good fortune to have been employed on important and confidential services, and to have obtained the approbation of his employers, he will be naturally led to believe that an exercise of discretion, directly tending to forward the views of the government under which he supposes himself to be acting, and that in a most favourite object of pursuit, which had been in contemplation for years, could not meet with disapprobation: on the contrary, that it would meet with the same approbation which had hitherto followed all his efforts in the public service.

It is not necessary for me to call to the recollection of this Court, the various situations in which I have been professionally employed in almost every country. In alluding, therefore, to my employment in Flanders, Holland, Russia, and in the Red Sea, and the discretion which was vested in me, particularly for procuring and bringing the Russian troops to Holland, I entreat that the Court will do me the justice to believe that I do so most reluctantly, and for the purpose not of claiming merit, but of availing myself of the benefit of the argument I have above submitted to the Court, to the extent to which my humble rank and limited services may bring me fully within the scope of it.

Having given a general view of the subject, in order to direct the attention of the Court to the statement which I must enter into, and to enable them more readily to apply the facts, I shall proceed to the circumstances which preceded and gave rise to the expeditions to the Cape and Buenos Ayres; and I must for that purpose go back to the period when I was first desired to collect the information necessary for planning the latter expedition.

It was in the end of the year 1803, that I first had conferences with some of the members of the administration then in power, relative to an expedition to the Rio de la Plata, and which was combined with one proposed by General Miranda. I had also frequent communications with General Miranda on the subject;

and, in fact, towards the close of that administration, some steps were taken for carrying this projected expedition into effect. In the course of the following year, 1804, a change occurred in the Government of the Country, after which I was appointed to command the blockading squadron off Boulogne, in the absence of Admiral Louis. During this period, Lord Melville, then First Lord of the Admiralty, corresponded with me on the subject of Miranda's plan; and on my coming to town in the month of October, in that year, (at which period the probability of a Spanish war had increased) his lordship directed me to send again for General Miranda, and to digest my ideas on the subject of an expedition against the Spanish settlements in South America, into the form of a memoir. To the best of my recollection I delivered this document to Lord Melville, on the 16th of October, 1804: shortly afterwards I was directed to attend Mr. Pitt, in order that he might converse with me on the various points comprehended in that memoir.

In the month of December, 1804, the Diadem, to which ship I was appointed, was put into commission for the express purpose of my proceeding in her on the intended expedition to South America; but various circumstances arose to retard the execution of the project at that time. These facts, as far as Lord Melville was concerned, his lordship will, I am confident, substantiate by his own deposition.

In July, 1805, when I was at Portsmouth, anxiously waiting the final arrangement about South America, I received, by private channels of communication, an account of the weak state of the garrison at the Cape of Good Hope. This intelligence appeared to me so important, not only from the advantage to be derived from the capture of the Cape of Good Hope itself, but from the facility which the possession of that settlement would afford to the projected conquest of the dependencies on the east coast of South America, that I lost no time in coming up to town and communicating it to Mr. Pitt.

This communication was made through Mr. [illegible]

then one of the Secretaries of the Treasury, whom I shall call as a witness before you.

I can take upon me confidently to say, it will appear, from the evidence of that gentleman, that the idea of an expedition to the Cape was adopted by Mr. Pitt, on this suggestion; and in the course of a few days I received my instructions to proceed in the Diadem, as commanding officer of all his Majesty's ships and vessels destined for that service.

On the 29th of July, 1805, I took leave of Mr. Pitt, when I had a long conversation with him on the original project of the expedition to South America; in the course of which Mr. Pitt informed me, that from the then state of Europe, and the confederacy in part formed, and forming against France, there was a great anxiety to endeavour, by friendly negociation, to detach Spain from her connection with that power; and, until the result of such an attempt should be known, it was desirable to suspend all hostile operations in South America; but, in case of failure in this object, it was his intention again to enter on the original project. From these circumstances it will, I am confident, appear manifest to every Member of this Honourable Court, that if the attack on the Cape of Good Hope preceded that of the Spanish settlements, the priority was the result of my own immediate suggestion to the late prime minister. Unhappily for me, death has deprived me of the means of proving the particulars of what passed in my last interview with that illustrious and ever to be lamented statesman. But I can prove, by the strongest presumptive evidence, that one of the last orders to me, from Mr. Pitt, was to furnish Mr. Huskisson with a memorandum of the names of the gentlemen from whom he was likely to obtain any further information he might want on the subject. Our conversation took place in Mr. Huskisson's room in the Treasury; and as Mr. Pitt was going out Mr. Huskisson came in, and to him I immediately communicated Mr. Pitt's directions to me, and furnished him with the names; and Mr. Huskisson can prove, from subsequent conversation with Mr. Pitt, that the names were so given to him by Mr. Pitt's order. Had Mr. Pitt

been still living, I should not have been driven to resort to presumptive proof. I may, however, observe, that such proof is often as strong, and in all cases, by the laws of this country, even on trials for murder, is considered as conclusive as direct evidence.

I request, therefore, the Members of this Honourable Court to compare all the circumstances positively proved—the plan delivered in—the expedition set on foot to carry it into execution—the delay of it—the substitution by my suggestion of the Cape—and what will be proved by Mr. Huskisson, as to the last order I received relating to this project; and ask themselves whether it is possible to entertain a reasonable doubt, independent of my assertion, of my having been in complete possession of Mr. Pitt's views towards this expedition.—And, in corroboration of what I have above stated, Mr. Huskisson can prove that active steps were taken to continue to procure further information in relation to the Spanish settlements on the east coast of South America. The precise nature of these steps (as I do not feel at liberty, even in my own defence, to make disclosures which might hereafter hazard the personal safety of others), I cannot state: it will be sufficient for my purpose, and sufficient, I trust, for the Court, that steps were taken which shewed that the object was not lost sight of, though postponed, from considerations connected with the then political state of Europe, and which circumstances I have no hesitation in saying were the sole cause of my not having specific instructions upon the subject. It is hardly necessary, therefore, for me to state to this Honourable Court, that I sailed from England under the strongest conviction that I should, at some future period, when the political state of Europe might make it eligible, receive orders to strike a blow in South America.

Early in February, 1806, I received accounts of the termination of the war in India, and naturally concluded, that no possible exigency could immediately arise in that country, to make it necessary for the Governor-General to apply to the

In the course of the same month of February, I also received the news of Lord Nelson's glorious victory off Trafalgar, and an account of the confederacy against France, from an alliance with which power it had not been practicable to detach Spain.

Towards the end of February, a Danish vessel, which arrived at the Cape, brought English newspapers, giving an account of the defeat or capitulation of the Austrian army at Ulm.

By the capture of the Volontaire French frigate, on the 4th March, 1806, I learnt the defeat of the Russian army at Austerlitz, and that Bonaparte was in possession of Vienna.

This Honourable Court will, therefore, not fail to observe, that the causes which had contributed to suspend any expedition to South America, as a matter of policy, and to change my original destination to the attack on the Cape, were suddenly done away. The war on the continent had closed so disastrously, as to exclude all hope of the revival of any confederacy which could afford the most distant prospect of success in any attempt to detach Spain from France, and had led to acquisitions by the enemy, which made any attempt which was likely to throw a counterbalancing weight into the scale of England most important; and I believe I shall be able, without much difficulty, to satisfy the Court by evidence, that the then Government, under the guidance of the illustrious Statesman who is now no more, had looked to South America, as affording the best prospect for views of that description: the only subject, therefore, which remained for consideration was the practicability of the measure, and the safety of attempting it, with reference to the force at my disposal, and without hazard to the security of the Cape. I well knew it to be a favourite object of Mr. Pitt; I knew the causes which had suspended it; and I was well satisfied, that my having received no instructions on the subject arose from there being not the most distant idea of those causes being so suddenly removed, by the rapid and total change which took place in the state of Europe from the successes of Bonaparte. But even under these impressions, and with so favourite an object of pursuit before me, I did not at

carry troops from the Cape for its accomplishment: on the contrary, I directed all my attention to measures of precaution as to the French fleets which were at sea, and the protection of the Cape and the trade; as will most clearly be established, when I come to state those measures in detail.

Having established these general principles applicable to the nature of the charge, and stated all the circumstances which occurred previous to my leaving England up to the period of the commencement of the expedition, so as to put the Court in full possession of the impressions on my mind upon the subject; and also stated my conduct, and the motives by which that conduct was directed, up to the period of my contemplating leaving the Cape, and the expedition to Buenos Ayres, I now come more immediately to the charge itself; on which it will be incumbent upon me, first, to prove that I neither left the Cape exposed to attack or insult, or the trade of his Majesty's subjects unprotected, which I undertake to make out to the satisfaction of this Honourable Court; leaving as the only questions for decision, first, to what extent the disposal of the force under my command was an assumption of discretion unsanctioned by particular direction or authority; and next whether, under the general power vested in every commander of employing his force for the good of the service and the annoyance of the enemy, as far as might not be inconsistent with his orders, the attack on the Spanish settlements in the Rio de la Plata was a justifiable exercise of that discretion, under all the circumstances.

The first subject for consideration was the safety of the captured settlements, and arrangements with a view to the French squadrons, and the protection of the trade; the first of which I am charged to have left unguarded and open to attack and insult, and the latter to have left without protection. I must here call the attention of the Court to the particular words of the charge, — "And whereas it appears, by letters from Sir. "Home Popham to our Secretary, dated the 13th and 30th of "April, 1806, that with the view to attack the Spanish settle-

" ments on the Rio de la Plata, for which attack he had no
" direction or authority whatever, he did withdraw from the
" Cape the whole of the naval force, which had been placed
" under his command for the sole purpose of protecting it;
" thereby leaving the Cape, which it was his duty to guard, not
" only exposed to attack and insult, but even without the
" means of affording protection to the trade of his Majesty's
" subjects, or of taking possession of any ships of the enemy,
" which might have put into any of the bays or harbours of
" the Cape, or parts adjacent; all which the said Sir Home
" Popham did, notwithstanding that he had received previous
" information of detachments of the enemy's ships being at sea,
" and in the neighbourhood of the Cape; and notwithstanding
" he had been apprised that a French squadron was expected
" at the Mauritius, of which he informed us by his letter to our
" Secretary, dated the 9th of April, 1806, only four days prior
" to his departure from the Cape to the Rio de la Plata." I will now state the intelligence I had received in relation to the French squadron, and my conduct on that intelligence, as applicable to these parts of the charge. The first intelligence I collected from the officers of the Volontaire, which was captured on the 4th of March, 1806, induced me to apprehend an immediate attack on the Cape, or, at all events, that one of the divisions of the Brest squadron would put into the Cape; this is apparent from my letter to the Secretary of the Admiralty of the 7th of March, 1806,* detailing the accounts I had then procured, which I will produce to the Court; and this letter shews my anxiety on the subject, and the measures I took to protect my squadron and the settlements. By subsequent and more particular inquiries of the officers of the Volontaire, stated to the Admiralty, in a letter of the 20th March,* which I will also produce. I gathered such presumptive evidence respecting the ulterior destination of Willeaumez's squadron, as induced me strongly to infer that, after cruising a certain time on the bank of Laguillas, he would put into the Brazils for water and refresh-

* See these letters hereafter.

ments, and thence proceed to the West Indies; more especially after he should have been informed that the Cape was actually taken by the British forces: indeed so strongly did this presumption then operate upon my mind, confirmed as it was by no enemy having appeared at the Cape, that I dispatched a small copper-bottomed transport brig to Admiral Cochrane at Barbadoes, to apprise him of what I conceived was the most likely course to be pursued by Willaumez, under every circumstance which had reached my knowledge respecting the state of his squadron.

I also dispatched the Protector gun-brig to Sir Edward Pellew in India, and the Rolla brig, to endeavour to fall in with whatever British squadron might be employed in the blockade of the Mauritius.

These measures of precaution will evince to this Honourable Court my extreme anxiety to communicate to the Commanders in Chief of his Majesty's naval forces in every quarter of the globe, and on every station liable to attack from the enemy's flying squadrons, such intelligence as might best enable them to intercept those squadrons, or to act on the defensive, and afford every protection in their power to the commerce of the United Kingdom.

While I was employed in transmitting this desirable information to the East and West Indies and other parts, little did I imagine that I should have been accused of not affording protection to the trade of his Majesty's subjects, merely because I did not with my squadron become stationary at the Cape, where I was not enjoined by my instructions, or called upon by any apparent necessity, to remain.

Here, Sir, I must for a moment advert to the instructions of the 2d August, 1806, ordering me to send a frigate to cruise on the East coast of South America, between Rio de Janeiro and the Rio de la Plata. From such an order it is certainly possible to draw this inference, that I had no specific directions with relation to the attack of the enemy's settlements in the Rio de la Plata: this I have already fully admitted. [illegible]

Lord of the Admiralty (who, I am well informed, was not in the habit of attending the consultations of his Majesty's then confidential servants) was not acquainted with any thing which had passed in relation to the expedition to South America; as is evident from the following letter from Lord Barham, in answer to one I had written to him from St. Helena, mentioning the intended attack on the Rio de la Plata:

"DEAR SIR, Barham-Court, 9th August, 1806.

"I have received your letter of the 31st April, from St. Helena, and also the former papers relative to Miranda's expedition. If the last had been communicated to me before you sailed from England, I might have hoped to have been useful in promoting it; but the misfortune of Mr. Pitt's death, and the natural change that has taken place in the administration of public affai s, has, I am afraid, rendered all these views abortive.

"I can say nothing decisive on your present expedition, as it must depend on your knowledge of the state of India when you took it: but if I had continued in the administration, I should have been disposed to have given full credit to your intentions.

"Public affairs are in a state of uncertainty; negociations are on foot, and Lord Lauderdale sent over to Paris. The country is sanguine, and I hope with reason; but Mr. Fox's state of health must be a weight in the opposite scale.

"It is said, that Sir David Baird as well as yourself will be recalled; I trust, however, that you will succeed in your attempt before that happens.

"I sincerely wish you success. I have not seen your dispatches to the Admiralty-board, having no acquaintance with the First Lord. I am, however, with much esteem,

"Yours,

"BARHAM.

"P.S. We have been very successful in the disposition of our squadrons, as far down as the capture of Linois by Sir John

It is here obvious, as I have stated, that I had no communication whatever with Lord Barham upon the subject of South America: although I knew that La Plata was a part of the Cape station last war, as well as the Mauritius, yet I doubted whether the last place would be considered so this war; and upon writing a letter to Mr. Barrow on the subject, I received the letter of the 2d August, which has been read in evidence on the part of the prosecution, accompanied by a private letter of the same date, stating that he had not been able to get a bomb allowed, but had sent the above-mentioned order for a frigate to the coast of South America; but that it did not appear to be necessary to look out to the eastward, as little was to be apprehended from that quarter; and he added, "that it would only "create a jealousy in the commanders in the Indian seas, whose "commands extend at present to the Mauritius."

It is publicly known, and officially, to some of the Members of this Court, that, during the late war, our cruisers were constantly either off the mouth of the river, or cruising absolutely off Monte Video; one of the very ships, indeed, (the Diomede), which had cruised there, was now one of my squadron; and, independent of every other consideration, I not only had the opinion of that respectable officer Captain Rowley, who was on the Cape station last war, that the Rio de la Plata was considered as a part of that station, but it was also the unanimous opinion of every officer under my command; and some of whom, if necessary, will, I have no doubt, give their testimony to this effect. I beg it, however, to be understood, that these opinions were expressed long before our arrival at the Cape.

I have entered at some length on this subject, because an impression has been circulated with considerable industry, that I had no authority whatever to go to the Rio de la Plata; but it must be evident, by the letter of the 2d of August, that the Admiralty considered that river as an enemy's port, which ought to be constantly watched by some of the cruis-

quently within the limits of his command; nay, if it were possible that it could be contended, that, because the order directed the sending a frigate, I had no right to carry there my whole squadron, I should answer, that the object of sending a frigate would be nugatory, unless it was allowed to act on the intelligence she might bring; for I would ask whether, if a cruiser had brought an account that two of the enemy's line of battle ships had entered the river totally dismasted, and that they were moored off Monte Video, and every exertion was making to get them refitted for sea, I should not have been justified in sending a force from the Cape to attack them without a moment's loss of time?

But to revert to the military state of security at the Cape: by the well-known zeal, ability, and judgment of Sir David Baird, it was placed in a state of the most perfect safety. The military dispositions of that distinguished officer were so judicious and skilful, as to inspire the firmest confidence in a successful result, even under the supposition that an attempt should be made to wrest this conquest from the British forces; while his political arrangements gave the most general satisfaction to the inhabitants of every description. The garrison had been strengthened by a levy of native militia, and its means of defence were deemed so ample and adequate by Sir David Baird, whose opinion in such a case I considered myself justified in adopting, as he was the most competent judge in military affairs, that this intelligent officer did not hesitate to furnish a detachment of his gallant troops, in consequence of my submitting to him all the information I had received respecting the defenceless state of Monte Video and Buenos Ayres, and my urgent representations to him of the great advantages which our country was likely to derive, particularly at so critical a period, from such a valuable acquisition as the conquest of one or both of those places. Certain I am, that it is not necessary for me to impress on this Honourable Court, that the preference felt by the Dutch colonists and natives to the mild and fostering protection of the British govern-

assistance in repelling a French force, if it were possible to expect such a force; as, in the event of its succeeding in the attack, the colony would have become subject to the oppressive exaction and tyranny of the French Government.

But if any additional proof were wanting of the perfect state of security in which Sir David Baird considered the Cape after he had furnished me with a detachment of his garrison for the expedition to Rio de la Plata, it is to be found in the circumstance of his having reinforced General Beresford by a second detachment of his troops. This surely furnishes incontrovertible evidence that Sir David Baird considered the Cape in no danger from the weakness of his garrison or means of defence; and shall I be condemned for availing myself of that aid, which his superior judgment felt could be afforded with perfect safety?

In speaking of the state of security in which the Cape was considered by General Baird I have not yet sufficiently noticed the skilful and judicious manner in which he had augmented his means of defence. But I shall prove to the satisfaction of this Honourable Court, by the testimony of Mr. Browne, who was Master-Attendant at the Cape, that, by the construction of several additional batteries mounted with heavy artillery, no enemy's ship could fairly enter any of the principal bays or harbours in its vicinity, without incurring the danger of being captured or totally destroyed. In fact, Mr. Browne will be able to show to the Court, that it was the most earnest wish of Sir David Baird, that the enemy might make an attempt to wrest the settlement from the British forces. He was perfectly satisfied they would find it almost impossible to effect a landing; or, if a landing was effected, to succeed in reducing the place with an army of ten thousand men.

I must now, Sir, particularly advert to a letter from General Baird to Lord Castlereagh, dated 5th May, 1806, which has been read as part of the charge, but not proved by evidence. I scarcely need remind the Court, that the introduction of this letter of Sir David Baird's into the charge has only

been communicated to me since my arrival at Portsmouth on Wednesday last. This letter states, that a French frigate anchored in Simon's Bay, and sent a boat on shore; which boat, with a French officer and her crew, were taken prisoners on their landing. This letter must have been engrafted on the charge with a view of supporting that part which alludes to the protection of the Cape from insult, but more particularly to what relates to its being left without the means of taking possession of any ship of the enemy that might put into any of the harbours or bays of the Cape. It is intended, no doubt, to endeavour to impress the Court with an opinion, that if I had remained at the Cape with my squadron, the French frigate in question might have been captured. However specious such an idea may, probably, appear, nothing can be more erroneous.

This French frigate is stated to have come into Simon's Bay, where she is said to have anchored; but I shall prove, Sir, by the evidence of Mr. Browne, that she never did enter Simon's Bay, but came to anchor in False Bay, and so far out, that when she was fired at from the batteries in Simon's Bay, every shot fell short. No sooner did she discover, by these discharges of cannon, that the settlement was in possession of the British forces, than she cut her cables, and made all sail into the offing.

Now, Sir, upon the supposition that I had received no intelligence to induce me to proceed with the squadron to the Rio de la Plata, I deny the probability, I might even say the possibility, of my being able to capture this French frigate. To put the fact in a clear point of view, so as to convince every Member of this Honourable Court that no imputation can possibly attach to me for her escape; it will only be necessary for me to prove, by the deposition of the same witness, Mr. Browne, that while I was lying at anchor in Table Bay, with the greater part of my squadron, another French frigate (La Piedmontaise) chased in there a neutral ship, and actually approached the squadron so near, that from the signal station on the Lion's

standing that I had received a message to this effect from the officer stationed at the signal tower, it was utterly impossible for me to prevent her from escaping. The general state of the prevailing winds in the principal anchorages at the Cape, Sir, is such, that the utmost efforts of the most skilful and vigilant commander of a squadron, lying there, would in vain be exerted in attempting to overtake an enemy's ship that should use due precaution in standing in for the land to reconnoitre. Some of the Members of this Honourable Court may probably be well acquainted with the bays and anchorages at the Cape, and in the neighbourhood. Those who have a knowledge of them will be satisfied that I am correct in asserting that a British squadron, lying in Table Bay, can seldom or ever get out between Green Point and Robin Island, unless there is a strong northerly wind, by reason of the heavy swell constantly setting in there from the south-west, and the current, which come to the southward and eastward, and sets to the northward between Robin Island and the Main; consequently an enemy's cruiser, standing in for that part of the land called the Lion's Rump, would, as soon as she discovered a squadron at anchor in the bay, be able, under the circumstances before stated, to effect her escape; because the British fleet would, with the south-east wind, which is the prevailing wind at the Cape of Good Hope, have to run down to leeward, that is, to the westward of Robin Island, thereby making a circuit of at least three leagues before she could haul up in chase of an enemy's cruiser. This, Sir, was exactly the case when La Piedmontaise, a French frigate, hove in sight of the signal post, as I have before observed, while I was lying at anchor in Table Bay. The south-east wind prevailed in the offing, while there was a dead calm in the bay; and although, on hearing of a strange sail being in the offing, I instantly made a signal for the Leda and Narcissus to slip and chase; yet it was impossible for those frigates to get out of the bay till the evening of the following day.

Now, Sir, let us suppose that I was lying with all, or a part of my squadron, in Table Bay, may I not come nearer the case in Simon's Bay, when La Cannoniere was standing in; can it

be imagined that she would, on the discovery of my squadron, have continued to do so, much less have come to an anchor, even out of gun-shot? Independently of which, circumstances, somewhat similar to those before described, would have opposed any efforts I might have made, on such an occasion, to prevent her escape; for the winds in Simon's Bay are, in general, so light and variable, that before a ship of war could have slipped and got out of the bay, the Cannonniere, or any other enemy's cruiser standing in for the land in that quarter, would have made so large an offing as to afford no probability of success to any ship detached in pursuit of her from the anchorage in Simon's Bay. I shall only add, that ships lying at anchor in Simon's Bay may be seen at so great a distance by any vessels standing into False Bay, that there is no chance of a capture being made of an enemy's cruiser, which could not fail to observe any men of war of equal or superior force, because she is sure to have the bay quite open, in consequence of the necessity of her keeping in the north-east part, for the purpose of continuing within the limits of the trade-wind, and of avoiding the Whitle Rock.

I have entered into this explanation with a view of removing any unfavourable impression which the circumstances, relative to La Cannonniere, as mentioned in Sir David Baird's letter to Lord Castlereagh, dated the 5th of May, 1806, are intended to produce on the Court. In doing this, Sir, I flatter myself that I have also completely answered that part of the accusation which mentions, that I left the Cape, "*without the means of taking possession of any ships of the enemy which might have put into any of the bays or harbours of the Cape, or parts adjacent.*"

As to the Cape having been left *without the means of affording protection to the trade of his Majesty's subjects*, in consequence of my having sailed with my squadron on the expedition to the Rio de la Plata, I shall also prove, by the testimony of Mr. Browne, who was master-attendant at the Cape, that the different batteries, armed with heavy cannon, are erected in such positions, as to command the anchorage in Table Bay and Simon's Bay; so

should attempt to come within the range of their guns, they at the same time afford to all merchant vessels, sailing under the British flag, the most complete protection. It having been the particular duty of Mr. Browne, as master-attendant at the Cape, to board all ships that might enter Table Bay, or False Bay, and to bring all King's ships and government vessels to a proper anchorage, he is fully able to convince the Court that I am perfectly correct in all I have advanced in reply to this part of the charge; the fallacy of which I have clearly illustrated. Besides, at the time when I left the Cape the winter season was about to commence, during which no ships can lie in Table Bay with safety. Commodore Johnstone justly observed, when he was sent into those seas on a secret expedition, in 1781, it was deemed unadviseable by himself and General Meadows to attack the Cape in that season. No attack, indeed, on this settlement was to be apprehended from an enemy's force, during the period in which I am charged with leaving the Cape exposed to attack and insult.

Independently of these circumstances, I would ask, how often has the Cape been left without a single ship of war to assist in its defence, during the time it was in possession of the British forces in the late war, and the flag of the naval commanding officer on the station left flying on board a small vessel scarcely capable of making any resistance? Indeed, in the immediate expectation of the arrival at the Cape of some men of war from England, I left an order,* dated the 13th of April, 1806, addressed to any naval officer who might arrive there, and be junior to myself; by which order he or they were at perfect liberty either to remain at the Cape, or follow me to the Rio de la Plata, as should appear most for the benefit of his Majesty's service, after a consultation with Sir David Baird on the subject.

I have already, I trust, repelled that part of the charge which accuses me of having "*left the Cape not only exposed to attack and insult, but even without the means of affording protection to the trade of his Majesty's subjects*, or of taking possession of any ships of

* See this order hereafter.

the enemy that might have put into any of the bays or harbour of the Cape, or parts adjacent."

I have explained to the Court that the season, at the commencement of which I left the Cape, was adverse to the attack of an enemy on that settlement; which, as I before observed was a reason assigned by Commodore Johnstone and General Meadows for not venturing on such a measure; and that, on that account also, no hostile operations were to be apprehended in that quarter at the time of my departure for the Rio de la Plata. I have shewn, too, that I took the most active and effectual measures of precaution to afford protection to the trade of his Majesty's subjects in every quarter; and that even had I remained with my squadron in Simon's Bay (for I could not have kept it in safety in Table Bay), there was little or no probability of my being able to take possession of any ships of the enemywhich might put in there, or into any of the bays or harbours of the Cape, or parts adjacent.

I must now reply to the continuation, or sequel, coupled as it is (in a manner not as I conceive the most candid) with the preceding part, which I have answered, and, I hope, refuted. This sequel runs thus:—"All which he, the said Sir Home Popham, did, notwithstanding he had received previous information of a detachment of the enemy's ships being at sea, and in the neighbourhood of the Cape; and notwithstanding he had been apprised that a French squadron was expected at the Mauritius, of which he informed us, by his letter to our Secretary, dated the 9th of April, 1806,* only four days prior to his departure from the Cape to the Rio de la Plata."

I have called the manner in which this sequel of the charge is concluded uncandid; for it conveys to the mind that I left the Cape at the very moment when detachments of the enemy's ships were expected there, of whose arrival in the neighbourhood of the Cape I had received previous information.—That this is not a fair or candid interpretation will be manifest, when it shall be seen, by the perusal of the whole of my letter of the 9th April,

* See ante, page 41.

to Mr. Marsden, and by an examination into the particulars of the information asserted or implied to have been thus given by me to the Admiralty respecting detachments of the enemy's ships, that my expressions, in one part of the said letter, explain completely those previously used, either in another paragraph of that letter, or any prior intelligence given by me respecting the enemy's ships in other letters; and that I had, in my communications to the Admiralty, fairly disposed of Willeaumez's squadron, which, in fact, was the French squadron said to have been expected at the Mauritius.

What, Sir, can be more uncandid than thus to allude to a part of a letter; and, by not adverting to some other part of the said letter, make it appear that the writer (and that writer the commanding-officer of a British squadron in a distant quarter) stands, as it were, before his judges self-convicted of improper conduct by his own official communications? My respect to the Court, and the control which I have endeavoured to impose upon my feelings and my language, prevent me from giving way to the sensations which naturally arise in my breast while I am commenting on such a proceeding. Justly as I have a right to complain of it, I shall content myself with pointing it out to the notice of the Court, and with proving to the conviction of all the honourable Members of which it is composed, that there is no just ground for the interpretation which is attempted to be impressed on their minds—that I not only knew of the expected arrival of detachments of the enemy's ships at the time when I left the Cape with my squadron, but had myself actually given to the Secretary of the Admiralty information to that effect. A perusal of the letter in question, with a few remarks, will be sufficient wholly to do away the imputation to which I have just alluded:

"Sir, Diadem, Table Bay, 9th April, 1806.

"As the season is now very far advanced for lying in this Bay, and the weather particularly unsettled for the time of the year, I propose quitting it with the squadron immediately; more especially as, from the length of time that has elapsed

since we heard of Admiral Willeaumez's fleet, it is very improbable, consistent with the situation he was in, that he should come here at present."

Thus, Sir, in the very first paragraph of this letter, so far from my saying that I had received previous information of detachments of the enemy's ships being at sea, and in the neighbourhood of the Cape, I begin by stating,—as the season is very far advanced for lying in Table Bay, and the weather particularly unsettled for the time of the year, I propose quitting it with the squadron immediately;—assigning, as an additional reason for my departure, that, from the length of time that had elapsed since we heard of Admiral Willeaumez's fleet, it is very improbable, consistent with the situation he was in, that he should come here at present. I then proceed to remark, that, "to determine his position at this moment would be impossible, and it would almost be equally difficult to decide on the best mode of applying the exertions of the squadron the ensuing two months to the greatest advantage."

From the foregoing paragraph it is, I think, pretty clear that I was under no apprehension from the arrival of a hostile force at the Cape, or in any of the adjacent bays or harbours.

My next paragraph in the said letter is, "that the intelligence we received by La Volontaire, and which has already been transmitted to you (that is, to Mr. Marsden), for their Lordships' information, appears materially to incline to the supposition that the West Indies is the destination of Admiral Willeaumez's fleet;" but the Court will be pleased, I hope, to give the next paragraph their particular attention, while I observe that this is the part on which this unfounded interpretation of the letter rests.

"General Anker, the late Governor of Tranquebar, who is just arrived here on his way to Europe, informed me, in the course of conversation, that a French squadron was expected at the Mauritius, but that it was impossible for that island to supply any flour to it, without looking to Rio de la Plata or the coast of Brazil for a supply. On which consideration, I think,

employing the squadron in cruising a short time off that coast, instead of remaining idle, will be a disposition fraught with some advantages, and which I hope will appear so evident to their Lordships as to induce them to approve of the measure."

Here, Sir, I have stated my reasons for supposing that the ulterior destination of Admiral Willeaumez's squadron was the West Indies; and in the same paragraph of my letter I added what was mentioned to me by General Anker, the late Governor of Tranquebar, in the course of general conversation, respecting a French squadron expected at the Mauritius. But it is to be remarked, that this was not given to me by General Anker, or repeated by me to Mr. Marsden, as positive intelligence, but merely as a matter of conjecture.

Every member of this Honourable Court must be aware that during the progress of a war a variety of rumours obtain circulation, respecting the movements and supposed destination of the hostile naval forces, and that in a distant quarter of the globe some of those rumours are wafted in opposite directions, till the event proves that a report concerning the expected arrival of one squadron at a particular place originated from the circumstance of that squadron having fallen in with a vessel bound to that place, and conveyed through her some intelligence calculated to deceive and mislead as to the real object of its destination, while this false intelligence has the imaginary effect of dividing or multiplying this one squadron into two detachments, and thus creating a double cause either of alarm or precaution. This was the case in the present instance; the squadron alluded to by General Anker was no other than Willeaumez's squadron, which, as I rightly imagined, would either put into the Rio de la Plata or the Brazils for water and refreshments, and then proceed to the West Indies; which conjecture induced me to dispatch a vessel to Admiral Cochrane on that station, to enable him to be prepared against the enemy's arrival. I next informed the Admiralty of my then intended disposition of the squadron under my command, in these terms:

"As this letter is to be conveyed [illegible]

enter into any minute detail, but say it is my intention to proceed off Rio de la Plata, in the first instance; to send the Raisonable to her destination by the time fixed, the Diomede to Rio de Janeiro to procure rice for the colony, of which it is in the greatest want, and to return immediately to False Bay with the other ships, unless I should hear that Admiral Linois is at St. Catherines preparing to cruise for the outward-bound ships, in which case I shall endeavour to intercept him, if it does not infringe on the time of my return to the Cape to receive their Lordships' commands, in consequence of the dispatches conveyed by L'Espoir."

The letter concludes as follows:—" When I have the opportunity of a safe conveyance, to write more fully to their Lordships, I hope the additional reasons I shall then give will be sufficient to satisfy their Lordships of the expediency of the measures which I am now about to adopt."

Having thus brought the whole of this letter of the 9th of April, 1806, before the Court, I submit to their consideration, whether on a candid and dispassionate review of its contents, I am not borne out in asserting, that no passage in it can be fairly and justly construed so as to imply that I apprehended or expected the arrival of a French squadron at the Cape about the period of my departure from that settlement on the expedition to the Rio de la Plata? Aand my intended departure to that river before any communication had taken place with General Baird as to troops, and before, therefore, I could contemplate the expedition to Buenos Ayres, is proof of the interpretation I put upon the intelligence I had received; namely, that no hostile squadron could be then expected at the Cape; but if there was any truth in the intelligence, that I was more likely to meet any French squadron in the Rio de la Plata than at the Cape.

As to the circumstance of my leaving the Cape only four days after I had written to Mr. Marsden this letter of the 9th of April, my reasons for so doing are fully detailed in the official letter* which I addressed to him as secretary to the Board of Admiralty, on the 13th of April, which has been read to the Court as

part of the charge, and which I now request to be considered as again read,

These reasons are still more enlarged upon in a letter I addressed to the Admiralty from St. Helena, under the date of the 30th of April, to which the letter of that date read on the part of the prosecution is only an addenda, and therefore I must now desire to have the material letter read in this place.*

The Court is thus in possession of the reasons which I gave to the Admiralty, for having come to a determination to proceed as I did to the Rio de la Plata on the 13th of April, 1806; and from the validity of those reasons, added to the explanation, which I have entered into of my letter of the 9th of April, referred to in the charge, I should hope I have fully and clearly vindicated myself from this part of it, and repelled the insinuation intended to be conveyed, by the manner in which my said letter of the 9th of April is therein mentioned.

If I am asked, why I was so anxious to leave the Cape in such apparent haste as not to wait for the arrival of the men of war expected from England, my answer is this;—that I was apprehensive that any delay in my departure, added to the probable length of the passage to the east coast of South America, might defeat the object of the expedition, by retarding my arrival in the Rio de la Plata until that season which, from the information I was possessed of respecting the navigation of this river, might render it impossible to ascend it high enough to attack either of the settlements of Monte Video or Buenos Ayres.

I am now desirous of calling the attention of the Court to the manner in which the Secretary of the Admiralty replied to my letter of the 9th of April, wherein I apprised that Board of my intended departure for the Rio de la Plata. This letter is in the following terms;

" I have received and communicated to my Lords Commissioners of the Admiralty your letter of the 9th of April last, informing them of your intended proceedings with the squadron under your orders."

* Not put in the Minutes.

Have I not then, Sir, a just right to suppose that the Admiralty Board did not disapprove of my having sailed with the squadron from the Cape?—for certainly it is rational to infer that some expression of their displeasure would have been inserted in this letter of Mr. Marsden's. Am I not therefore justified in construing the silence observed on that head, as at least a tacit acknowledgement on the part of that Board, which has now brought me to trial for leaving the Cape destitute of protection, that it did not then excite their dissatisfaction?

I am naturally led to this construction, also, by the terms of their letter acknowledging the receipt of my account of the capture of the Cape, which is couched in the following terms:

"I have received and laid before my Lords Commissioners of the Admiralty your letter of the 13th of January last, with the several papers therein referred to, relative to the capitulation of the town and castle of the Cape of Good Hope."

It cannot be supposed that the capture of the Cape could excite their displeasure, if it did not entitle me to their thanks. If I had received both these communications,* was it possible for me to have concluded, that the quitting the Cape would have subjected me to a charge of misconduct, when the letter which acknowledged the communication of my letter was exactly similar to that which related to the capture of the Cape?

To the letter of the 13th no answer appears to have ever been written any more than to those of the 30th of April. Will it not appear to the Court almost incredible, that not only no disapprobation was expressed as to my intentions signified in the letters of the 9th, 13th, and 30th of April, but that no steps were taken to remedy the mischiefs I am accused of having occasioned; no ships ordered immediately to proceed to the protection of the defenceless Cape of Good Hope; no fast-sailing vessel to order me back to the duty I had so flagrantly broken, or even to supersede me for a considerable length of time? I must leave it to the Court to develope these mysteries. I could not

* See post, page 127 and 128

attempt it without breaking through that control which I have imposed upon myself in stating these transactions.

But, in truth, Sir, the importance which the Admiralty now profess to attach to the Cape seems not a little singular, when contrasted with the opinion which, from Mr. Marsden's letter acknowledging the receipt of my account of its capture, they appeared to entertain of it. Indeed the cold terms of this letter, unaccompanied with any thing like an expression of satisfaction, either in the success of the arms or in the efforts by which that success had been achieved, would naturally induce an idea that the Admiralty were disposed rather to regret the event than to consider it of any value, either as a conquest or as a proof of gallantry and good conduct in the officers and men under my command. But, Sir, though the Admiralty chose not to express the smallest approbation of the conduct of the naval force at the late reduction of the Cape, permit me to remark to the Court, that in acknowledging the receipt of my dispatches relating to that event, they on the very same day acknowledge to me the receipt of another letter* inclosing a copy of one which I had received from that active and able officer Captain Donelly, then of the Narcissus, (giving an account of his having driven on shore a French privateer), and in making this acknowledgment they desire me to acquaint him, that their Lordships highly approve of his conduct on that occasion. Must it not appear to this Honourable Court and to the world at large, not a little extraordinary, that the same Admiralty Board which could liberally bestow their applause on the conduct of a captain of a frigate in the destruction of an insignificant French privateer could withhold their approbation from another officer who commanded a squadron of His Majesty's ships, and all those who had acted under him, and were employed in the capture of a settlement deemed so important, in a military, political, and commercial point of view, as the Cape of Good Hope? Whatever might have been the opinion of the government of the time of the importance of the capture of the Cape, with reference to the thanks of

See post, page 128.

Parliament, so gratifying to those who receive them (to which it would be presumption in me to suppose I had any claim), I may venture, I believe, to state, that this is the first instance of a capture of this description having been made by a joint armament, in which some expression of approbation at least from the Lords of the Admiralty has not been bestowed on those of the Navy who have successfully performed their orders.

For it must be recollected, that, as to the Cape at least, the orders were specific and precise, and those concerned in the enterprise were engaged in the strict performance of their duty. And here, Sir, I may be allowed to remark, that the withholding from those under my command this natural and invariable reward of zeal, valour, and perseverance, successfully exerted in their country's cause, was to them the more mortifying, as the army, in whose efforts and gallantry they fully participated, was cheered by the approbation of their superiors, and had the consolation of being informed, that their labours and success were acceptable to those on whose approbation they look for encouragement and reward. On this occasion, I hope it will not appear vanity on my part to shew the different light in which our conduct was viewed by the Governor-General in council in India, who were pleased to transmit to me the following testimonies of their approbation:

"*Commodore Sir Home Popham, K.C. commanding his Majesty's Naval Forces at the Cape of Good Hope.*

"SIR,

"We have the honour to acknowledge the receipt of your dispatch of the 9th of February, intimating that you had directed the Commanders of the Honourable Company's ships Streatham and William Pitt to supply the naval store-keeper at the Cape with the articles enumerated in a list inclosed in that dispatch: we have the honour to express our entire concurrence in the necessity and expediency of that measure.

"We request you will accept our acknowledgments for the transmission of a copy of your dispatch to his Excellency Rear-

Admiral Sir Edward Pellew, under date 31st January, containing the details of the operations of the naval and military forces, under your command and that of Sir David Baird, employed in the late successful expedition against the Cape of Good Hope.

"On this occasion, we cannot refrain from the expression of our admiration at the able dispositions of the naval and military forces engaged in that arduous service, and the bravery, activity, and exertion, manifested by the officers and men employed on it, which secured the conquest of that important colony.

"The judgment, activity, and naval skill, manifested by you on that occasion, are consistent with those eminent qualities which have uniformly distinguished your exertions in the service of your country.

"We request you will accept our cordial congratulations on the success which has attended his Majesty's arms in the important capture of the Cape of Good Hope.

"We have the honour to be, Sir,

"Your most obedient humble servants,

"G. H. BARLOW.
"G. UDNY.
"J. LUMSDEN.

"Fort William,
10th June, 1806."

But to myself and my associates, some of whom had engaged most actively in the service on shore, and all of whom had exerted themselves in the landing, and assisting the troops with that ardour and perseverance so characteristic of British seamen, to which I had, as their commander, endeavoured to do justice, not one solitary expression of approbation was, as the Court have seen, communicated in the answer of the Admiralty. Yet I am to be condemned for having exposed, even to imaginary hazard, that acquisition which appears not to have been worth those thanks of our superiors; the value of which, though so easy and cheap for them to bestow, I need not expatiate upon in a Court of British Officers, whose actions and whose lives would be to the world the best proof of the estimation in which they are justly

silence, when I and those under me might have been gratified; but it is loudly enhanced, and made the subject of a criminal charge, when the object is to depress me. Whence this difference?—I leave it, Gentlemen, to your reflections—I leave it to the reflections of my country!

By permission of the Court, I shall next proceed to shew, as I have already done in part, that whatever dissatisfaction the Admiralty Board (which had succeeded to that Board under whose orders I sailed from England) thought proper to manifest for my having exercised my own discretion in undertaking the subsequent expedition to the Rio de la Plata; yet my conduct, in the execution of that enterprise, was such as to draw from them the most unqualified approbation, as appears from the letter* of the 25th of September, which I have already read in my defence.

The natural inference to be drawn from the perusal of that letter is, that the Admiralty Board, at the time when it was written, considered my recal as a sufficient mark of their disapprobation of my having left the Cape with my squadron, and attacked Buenos Ayres without orders. But the panegyric passed on my conduct, and those under my command, strongly marks the high opinion entertained of the importance of the conquest; for if Mr. Marsden's letter of the 25th of September, acknowledging the receipt of my account of the surrender of Buenos Ayres and its dependencies, be compared with his letter in answer to mine of the 13th of January, announcing to them the capture of the Cape, it is fair to infer from the circumstance of the Admiralty Board having expressed their unqualified approbation of my conduct in the conquest of Buenos Ayres, and of their having withheld from me every sign of satisfaction in regard to my proceedings in the reduction of the Cape, that, in their estimation of the comparative importance to the country of the two places, they set a much higher value on the acquisition of Buenos Ayres than on that of the Cape.

But, Sir, if my ardent zeal for the service of my country has,

in the opinion of any of the Members of this Honourable Court, carried me beyond the exact limits of unrestricted instructions, I submit that I have already suffered a more than adequate punishment; not merely by having been deprived of my late command, but from the degrading manner in which I was superseded and recalled, as must appear to this Honourable Court, when they find that my solicitation for the use even of a transport was peremptorily refused, and that I was left to take my passage to England in a small prize-brig, with the aggravating circumstance of the few men of the squadron put on board to navigate this vessel home being taken from her by the orders of my successor, Admiral Stirling, to whom I was scarcely known, and to whom therefore I could have never given personal offence:—For the proof of these facts I refer to the evidence of Captain King.

Whether the persons who gave these orders, or the admiral who executed them, thought they were the best means of upholding the character of a British officer commanding in chief, or whether they or he judged this was the most proper method of shewing others their extent of power, I will not presume to determine; but of conduct so unusual, so unprecedented, and so unhandsome, I assure myself no Member of this Court, nor any other person now present, can recollect an instance.—Humble, however, as my accommodation was, and exposed as I was to capture, in a vessel without a single gun to defend her, I reached this country without accident. The delay of Admiral Stirling's arrival in the Rio de la Plata, owing to the very unusual length of his passage, I shall always consider as a providential circumstance; for I can assert, without fear of contradiction, that his orders were to evacuate that settlement; and, but for this circumstance, which afforded time for the arrival of the Pheasant sloop with counter orders, South America would have been abandoned: whereas, I now may safely venture to predict, that the arrival of the force under General Achmuty has long since repaired the misfortune which befel my gallant friend General Beresford, by putting the British forces in

possession of Monte Video; and, I trust, not only rescued that distinguished officer and his brave army from the hands of the enemy, but fully punished the perfidy of those men who, whilst on their parole of honour and the complete enjoyment of personal liberty, violated the one, and availed themselves of the other, to combine means for the attack in which they unhappily succeeded.

Nevertheless, Sir, the unhandsome treatment which I have experienced, and of which I have just reason to complain, had no influence on my mind when I could be in the smallest degree instrumental in promoting the good of my country; which is fully shewn by my correspondence with Admiral Stirling. I here beg leave to read the following letter, to convince the Court of the accuracy of my last statement:

"Dear Sir, "Tuesday Night, 3d Dec. 1806.

"I have particularly examined the Master of the Duke of Kent, who sailed from England on the 24th of September. From the result of that examination, the circumstantial detail of the meeting of the Council of Trade, which is given in the newspapers, on the subject of Rio de la Plata, and from the contents of my own private letters, I cannot but feel a conviction that his Majesty's Government is now determined to follow up, with some considerable energy, the scheme which I had the honour of submitting to them, of attacking all the enemy's possessions in this country; and however decided their opinion might have been to abandon this project when you left England, I trust a very few days will give you the most positive proofs, that the subject has been reconsidered, and a contrary line of conduct has been acted upon.

"Under a conviction of this nature, so well supported in my judgment by collateral circumstances, I cannot refrain from offering you, in the most sincere and undisguised manner, (prompted, however, very materially on the sanction you gave me this morning in conference), my sentiments on the most advantageous line of service for the accomplishment of the great

" I think Monte Video should be the first object of attack, as the possession of that point gives every facility to the reconquest of Buenos Ayres. To speak on the first object in general terms, I think some more of the transports should have heavy guns put in them from the men-of-war, ready to attack the south wall of Monte Video, when the army advances to the peninsula of the town. I have already armed three transports and fitted two bombs for the same service.

" The capture of Maldonado has enabled us to mount our cavalry, and put the army in possession of some artillery, which it was before almost entirely destitute of, and the little service that it has seen has materially improved it for effective service.

" It is not my intention, nor is it necessary at this moment, to enter into any detailed proposition, because, I trust, you feel, from the assurances I have given you, that you can command that at all times; and I take this occasion of repeating, that, whatever my private feelings may be on the subject of my sudden recal from this river, they are are totally inoperative on my mind as a public officer. *I feel the same ardour and the same zeal for your success as I should for my own; and it is natural, in every thing that relates to South America, that I should do so; because the more brilliant your success is, the more it must bring to the recollection of my country the sound principles on which I first presumed to act, and the hardships of a squadron in a close blockade in this river during the winter.*

" I have now, Sir, only to request, that if you should determine to remain here, and that any attack takes place while I am on the spot, that you will allow me to act as your honorary aide de camp, or in any situation where I can impart to you, as occasion may require, the result of seven months local experience of this country, and at the same time to be the bearer of your dispatches to England; this will promise me a more certain return than the detour of St. Helena, though probably you may think it necessary on some further information to dispatch a ship direct, as ministers will be most anxious to hear, if they pursue offen-

first reinforcements; and as Sir Edward Pellew will beat the Cape at the latter end of this month with a very strong convoy on its way to Europe, it is likely he will not stop long at St. Helena. I shall have the pleasure of shewing you Sir Edward's letter to me on that subject, which will better enable you to form an opinion of his motives.

"To Charles Stirling, Esq.
Rear-admiral of the White,
&c. &c. &c."

"I am, &c.
"HOME POPHAM."

Having developed in the most fair, candid, and, I trust, respectful manner, all the motives which urged me to proceed to the attack of the Spanish settlements on the Rio de la Plata, I now beg leave to call the attention of this Honourable Court to the consequences which have already ensued from this expedition.

In the first place, then, I humbly presume, that it is but fair to infer, that His Majesty's government, notwithstanding the change which has occurred among its members, highly approved of the enterprise from the energy by which they are following it up, even at this very moment, when I am vindicating my conduct in having undertaken it without positive orders. The more they reflect on the advantages, which this country might derive from the acquisition of those valuable possessions, the more do they augment the means of insuring the conquest to which I have directed their attention. Were this not the fact, why, I would ask, have his Majesty's ministers since formed, with that view, armaments more than adequate to the task of conquering all the Spanish possessions on the east coast of South America? Those extensive armaments, either already gone or on the point of sailing to complete the great object which I had successfully begun, though with means comparatively so trifling, and which, being merely a removal of the squadron from a state of inactivity to enterprise, was attended with no additional expense to the country.

which the Board of Admiralty has shaped the charge. I am not accused of having, with inadequate means and with insufficient preparation, undertaken the attack on Buenos Ayres; the reasons for this will appear obvious when I come to comment, as I shall now do, on the instructions to Sir Samuel Achmuty, the officer sent out to prosecute the enterprise that I had so happily begun, and which officer, as already appears to the Court, was recommended to his Majesty's ministers by General Baird as a proper person to be employed on this service. In these instructions to General Achmuty, a copy of which was transmitted to the senior naval officer at the Rio de la Plata, and which I am prepared to prove from a copy given me by the Admiralty*, the utmost anxiety is expressed by his Majesty's present ministers, in the event of any misfortune having happened to General Beresford, to obtain such a footing on the continent of South America, either in the same or in some adjacent part, as may enable him (General Achmuty) to wait the arrival of a further force, and that force consisting of 3000 men; which is stated *not* to have been intended originally as a reinforcement to General Beresford, but for a service of very considerable importance, but which he is authorised to detain until his object is attained; and, in a preceding part of the instructions, General Achmuty is enjoined not too hastily to abandon the attempt of gaining a footing in South America.

Is it possible for me to avoid feeling or expressing some satisfaction, when I reflect that, notwithstanding the reverse of fortune which had occurred, I had anticipated not only the wishes of the last, but also of the present administration; that I had secured a very strong position, suited to the views of his Majesty's government, and had thus obtained a firm footing on the continent of South America; that General Achmuty would find the object of his expedition, in a great measure, completed before his arrival; and that the 3000 men, destined to another object of very considerable importance, would be in consequence at liberty to pursue their original destination.

in the opinion of his Majesty's ministers, was thus ordered to be diverted from the pursuit of that object in order to succour General Beresford, and in the event of his having been obliged to surrender, to enable General Achmuty to follow up the enterprise for having undertaken which I am now arraigned, and to use his utmost endeavours to establish himself in some part of the coast of South America; of how much greater importance must not the acquisition of a secure port on the Rio de la Plata, and especially one so tenable as that of Maldonado, be considered by those same ministers? Never, Sir, could I for a moment contend that success could justify neglect or breach of duty; but conscious as I am that I am not open to such a charge, it is impossible for me not to feel gratified in reflecting on the circumstance which I have just stated.

Moreover, Sir, the proclamation issued on the 17th of Sept. 1806, sufficiently shews the encouragement which the members of his Majesty's Government were anxious to give to the spirit of our commercial men, depressed beyond example at the unprecedented measures taken to exclude their exports from the continent of Europe, and the readiness with which they were pleased to meet my ideas on this particular point, by inviting all British subjects to trade with Buenos Ayres, and the other settlements on the Rio de la Plata, under the favour of his Majesty's said proclamation.*

In regard to the value attached to the conquest of Buenos Ayres in a political point of view, and which, as I have before observed, was one of the principal motives that urged me to undertake the enterprise, I cannot vindicate its importance more clearly and undeniably, than by quoting to the Honourable Court, the language used by Lord Lauderdale, his Majesty's Plenipotentiary at Paris, during the late negotiation for peace, to Mons. Talleyrand, the French Minister for Foreign Affairs. In a note written by Lord Lauderdale to the said Minister, on the 19th day of September, 1806, his lordship says, "When the undersigned reflects that he came to Paris, authorised to conclude peace upon terms understood to have been proposed by France; that notwithstanding the refusal of his Imperial Majesty of all

* Read, but not put in the Minutes.

the Russias to ratify the Treaty signed by Mr. D'Oubriel, and *the splendid successes obtained by his Majesty's arms in South America*, he was authorised to give assurances (as he had the honour of doing to his Excellency the Minister for Foreign Affairs) that the demands of his Court in its own favour would not in consequence of these successes be materially increased."

Is not this, I ask, language of which I have reason to be proud, inasmuch as it conveys, in a manner the most direct and unqualified, the opinion entertained by his Majesty's Government, of the successes, in the plan and accomplishment of which I bore so active and so considerable a share? If Lord Lauderdale calls the successes splendid, in an official note to the French Minister, surely it will not now be contended that they were not so considered by that cabinet which deputed him to negociate the late projected treaty for peace! and though his lordship adds, that the demands of his Court in its favour, would not, in consequence of these successes, be materially increased, yet this tone of moderation diminishes not their splendour; nor does it in the smallest degree detract from the merit of those by whom they were achieved. In fine, whatever difference of opinion may exist respecting the policy of extending our colonial conquests, there seemed to me but one sentiment entertained by his Majesty's government and by the country at large, in regard to the well-timed acquisition of Buenos Ayres, which, in the intended pacification of Europe, was, it is evident, of sufficient weight to incline the political balance still more in favour of England.

For if that negociation had terminated in a peace, upon terms honourable and advantageous to Great Britain, it will not be denied that the character of those terms would have been influenced, at least in some degree, by the success of his Majesty's arms in South America.

Before I conclude, I must complain of the mutilated state in which the Admiralty Board has presented to the public my letter of September last, giving an account of the re-capture of Buenos Ayres; most unfavourable opinions and prejudices have been excited against me by these mutilations. In fact, se-

veral persons have called on me for an explanation of the last-mentioned letter. I am compelled to notice the circumstance, not only in justice to myself, but also to that gallant officer General Beresford,, who, I trust, has long since been released from captivity through the success of his Majesty's arms. The comparison can only be made by reading my original letter, and the publication of it in the Gazette.* I here also beg leave to read my last letter to the governor of Monte Video, on the infraction of the treaty under which General Beresford surrendered.

I must now advert to the papers of the 14th of September, 24th of September, and 21st of November, and the inclosure in that of the 24th of September, which have been lately introduced into the charge. The latter I never saw, or heard of, until read in Court; nor was I informed, until my arrival at Portsmouth, that any of these papers were to be brought against me. The object of this attempt was, I presume, to shew the sentiments of the Government under whose orders I sailed, on the subject of the future destination of my force; but it was known to my prosecutors that I never received any of these papers; as the Belle packet by which one of them was sent was captured, and the Thalia, which conveyed the others, never went to the Cape; but, Sir, the subsequent opinion of the Government, founded also on subsequent hasty, and, as it afterwards appeared, inaccurate information, could not in any case be evidence against me, or implicate me in having used my force as I did; having, as it has been shown, no orders for my directions after the capture of the Cape; more particularly as the probability of such a destination, as it proved to have been the wish of the Government at that time, in certain events could not in the most distant way have been in contemplation when I sailed, and the possibility of which I could not suspect.

The correctness or impropriety of my conduct, must depend on that which I either knew, or was bound to presume, or suppose might have been the wishes of the Government under whose orders I sailed; and those wishes I have, I trust, sufficiently developed.

In addition to which I might observe, that these orders could not operate against me in another point of view. Before I could by any possibility have received them, I knew that the intelligence on which they were founded was wholly false, and that peace had been made in India. In proof of which, I beg leave to read General Baird's letter to Mr. Windham, in answer to the dispatches which he received on this subject:

Sir, Cape Town, May 27, 1806.

I HAVE had the honour of receiving by his Majesty's ship the Adamant, the duplicate of a dispatch from Lord Viscount Castlereagh, bearing date the 10th of September, 1805, and conveying to me his Majesty's commands to detach from this colony such a portion of the troops, under my command, as might be necessary for the security of the British possessions in India.

I am most happy to repeat, that the general tranquillity which now reigns in that quarter, will render it unnecessary for me to make such detachment.

I have the honour to be, &c.

DAVID BAIRD.

Right Hon. W. Windham, &c.

The receipt of these orders, therefore, had they come to my hands, could not have operated upon my conduct, but probably might, as before-mentioned, have corroborated my determinations, giving no reason to suppose, that for any great and important object, the withdrawing part of the force from the Cape would not be a measure likely to excite the displeasure of Government.

I have now stated all which appears to me as necessary to lay before the Court, on the subject of my conduct as an officer, with reference to the military question which arises upon it. One subject, however, for observation, still remains, and it is one that deeply interests my character and feelings, and one upon which I owe to accident and good fortune that I am in possession of evidence, notwithstanding I left the Rio de la Plata without the least suspicion of my being called upon to appear before a Court-Mar-

tial. I am aware, Sir, that my justification has already extended to a great length; yet, as I conceive it to be incumbent on me to omit no circumstance that can at all tend to illustrate the views which influenced my conduct during the expedition to the Rio de la Plata, I must solicit the indulgence of the Court while I state, as briefly as possible, a few facts which may serve to shew, that in the whole course of my proceedings, as commanding officer of the squadron in that river, I was never actuated by any selfish consideration; but that, from the time of the surrender of Buenos Ayres to his Majesty's arms, until the period of its being wrested from our possession, I made every sacrifice which might convince the world in general, that the good of my country was my sole object in having undertaken this expedition without positive orders. I am the more anxious to establish this, because I have had the mortification to hear it said, since my return, that sordid, instead of honourable, motives, operated to induce me to undertake this expedition. I am proud to have it in my power, not only to rescue my own character in this respect, but to prove that I have not degraded the profession to which I belong, by permitting unworthy motives to operate on my conduct as an officer: I should not have wanted precedents to bear me out even in such conduct; but though I have quoted precedents for my justification, as to the exercise of my discretion, I should disdain to avail myself even of the same authority, to palliate cupidity or injustice. In proof of my conduct in this respect, permit me, Sir, to recal to the attention of the Court, that immediately on the surrender of Buenos Ayres, all the property afloat contained in upwards of one hundred and eighty vessels, to the amount of at least a million and a half of dollars, was given up to the proprietors by proclamation—an evident proof of my sincere inclination to conciliate the minds of the inhabitants of every description, and to convince them that the expedition was undertaken with views diametrically opposite to those which attach to a predatory incursion. If it should be suggested that I could not have manned even a very small proportion of those vessels, I would reply, that I might have

Such was my conduct at the time of the surrender of that town, and on a contemplation of every event which might happen from the interior of the country, although I had then no reason to apprehend that an attempt would be made to dislodge from it the British forces, I acted with the same disinterested regard to public service in relation to large quantities of quicksilver and bark to the amount of upwards of three millions of dollars, in small and very convenient packages, which were in the castle near the quay, and might have been embarked in the course of three or four days; but I would not suffer any of the valuable merchandize whatever, which might be considered as appertaining to the captors, to be shipped, before the squadron should be completely victualled, in order that I might be enabled more effectually to blockade the river in case of a reverse of fortune; and the whole of which property was ultimately recovered by the enemy. Moreover, I proposed to the captains and officers of the squadron, and it was generally agreed, that we should present to Government whatever armed vessels might be captured, and be deemed fit for his Majesty's service. Among these was the Neptune, a fine ship of twenty guns, which had been formerly a Liverpool privateer, and had been taken by the Spaniards, together with several large armed schooners and gun-vessels. In short, on all occasions I inculcated and enforced, both by precept and example, the doctrine of sacrificing private advantage to the public good, and of regulating our proceedings by what might appear most for the honour and glory of the British nation. I am most happy in this opportunity of rescuing my character in this public manner, and by evidence before the Court, from the imputations which have been cast upon it in this respect.

I have at length concluded the statement of facts, and the observations which were necessary to enable the Court to form a competent judgment of my case, and in doing which I have unavoidably been obliged to occupy a considerable portion of your time. It may, however, be said, that in my letter to the

Admiralty, I did not fully detail all the motives which had led to my undertaking the attack of Buenos Ayres.

If the statement of these reasons should appear less ample and less detailed than those which I am now laying before the Court, it is because I conceived that I was addressing them to those with whose general views and intentions on this subject I was already acquainted, and who were well aware of the inducement to this undertaking. From those by whom my letters were in fact received, no intimation ever reached me that these reasons were insufficient, nor has any supplementary explanation been required. I have already said, that I did not receive any intimation of an intention to call me to account. I regret the silence of the Admiralty towards me, in both these particulars. Had they called for my justification at an earlier period, it might perhaps have satisfied them that there was no ground for bringing me before this tribunal; and at all events the notification of the design to accuse me would have given a fair, and surely not too favourable a warning to me to return prepared with all the means of my defence. Sufficient means I hope I have in the statements and evidence which I submit to you; but it is a little hard to be deprived of the testimony of those who, having been the witnesses of my conduct during the whole of my command, might depose most powerfully in my vindication; and this loss, which I cannot think accidental, I owe to the silence of the Admiralty.

Before I finally close, I must again shortly revert to the point most important, because it does not apply to my case only, but to that of every officer in the navy—I mean that of the discretionary use of authority without precise orders. Indeed, if an officer, commanding in foreign parts, is never to avail himself of information which he may receive, never to use his own discretion, or to undertake an expedition against an enemy's possessions without precise and immediate orders from home, which cannot arrive until the moment for action shall have elapsed; if he is to be so strictly and permanently bound by the letter of the instructions under which he sailed from England, that even

after the full and happy accomplishment of the object to which those instructions were directed, he shall not be at liberty to undertake and accomplish any other, however within his reach—however important in itself or in its consequences—however pointed out to him by new information, and by increased facilities—and however nearly connected in many important points of view with that which he was originally sent to accomplish; If this is to be the rule and limit of an officer's exertions in a situation of such trust and confidence, the result will, I confidently foretel, be ruin to the British Navy;—it will lead to the entire cessation of all acts of enterprise, and to the total extinction of that daring spirit which has so long bid defiance to all opposition; because an officer will be deterred by the reflection, that for venturing to attack or annoy the enemies of his country without positive instructions, his conduct may be prejudged by a superior authority at home, and (as in the order for holding the present trial) it may be stigmatised *as a flagrant breach of public duty that should not pass unpunished.*

I must now, Sir, before I end my defence, and put myself upon the judgment of the Court, draw your attention, in a few words, to what I humbly conceive are the points for your consideration.

On your decision now depends the future conduct and enterprise of the Navy of Great Britain; always bearing in mind, that I stand before you, not for having failed in the fulfilment of orders, but for having done more than my strict duty against the common enemy. The interest that I have in the result, deep as it is, is trifling compared with that which must be felt by every officer in the navy—I may say by the nation at large.

As on the one hand you are called upon to consider and decide upon my case, so as not to sanction, or authorise, by your judgment, a lax interpretation, or careless execution or neglect of orders; so on the other hand you are called upon, by a due regard to the interests of the Navy of Great Britain, and, as involved on their interests the safety, and independence of a nation, which looks up to that Navy for protection, not to check that

vourable sentence on me, and passed by such a Court, and so composed, may not easily be revived. I consider myself as an humble individual, standing before you on a charge deeply affecting my character, but more deeply affecting the future interests of the Navy. My case must be decided on general principles, totally unconnected with any feelings which relate to me personally; and it is for you, Sir, and the Honourable Members of this Court, to determine whether an officer, circumstanced as I was, employed as I have been on previous occasions, led on by a singular and connected chain of circumstances, to consider this enterprise as a favourite object, not of my own ambition, but of the wishes of a great and distinguished minister, on whose approbation would have followed, not merely protection, but probably commendation, honour, and reward, having been originally, and so lately, appointed to carry it into execution, diverted from it only by my own suggestion of an intermediate expedition; having a full and confidential knowledge of all the circumstances which for a time delayed the execution: and hearing in a distant part of the world, without means of immediate communication, that all these obstacles had been done away; having also means at my disposal adequate as I thought to the end, and believing that the then state of Europe, and particularly of my country, the immediate execution of this plan was most important. It is for you, Gentlemen, I say, under all these circumstances, to determine whether I was justified according to my orders, or whether I am not to stand excused for having hazarded this exercise of discretion.

In your hands I put, with confidence, my case; satisfied that the importance of it, and the attention I have received, will ensure me the benefit of all the circumstances I have stated, and of the arguments I have urged. On these grounds, I humbly hope and trust that I shall receive from the justice of the Court an HONOURABLE ACQUITTAL.

LETTERS, &c.

REFERRED TO IN

SIR HOME POPHAM'S DEFENCE,

And admitted in the Minutes.

No. 19. Admiralty-Office, 25th September, 1806.

SIR,

I RECEIVED, on the 12th instant, by Capt. Donnelly, and lost no time in laying before my Lords Commissioners of the Admiralty your letter of the 6th July, acquainting me, for their Lordships' information, that the city of Buenos Ayres and its Dependencies had surrendered to his Majesty's arms, after a slight resistance to the advance of his Majesty's troops under the command of Brigadier-General Beresford, and detailing the operations conductive to this object on the part of his Majesty's Naval forces under your direction. In answer thereto, I have received their Lordships' commands to acquaint you, that, although they have judged it necessary to mark their disapprobation of a measure of such importance being undertaken without the sanction of his Majesty's Government, and of your having left the station which it was your duty to guard without any naval defence, they are nevertheless pleased to express their entire approbation of the judicious, able, and spirited conduct manifested by yourself, the Officers, Seamen, and Marines employed under

senior Officer on the spot) will communicate to them in a proper manner accordingly.

I am, Sir,

Your most obedient humble Servant,

To Commodore Sir H. Popham. WM. MARSDEN.

(By the Ardent.)

No. 8.

SIR, Diadem, Table Bay, 7th March, 1806.

I HAVE confirmed the subject of the letter which I had the honour of addressing you on the 14th instant, to the capture of the Volontaire; but as I have courted a great deal of conversation with the officers of that ship, under various pretences, tending, however, entirely to procure intelligence of the strength and probable destination of the fleet that sailed from Brest, I think it highly expedient to dispatch an officer with the result, for the information of my Lords Commissioners of the Admiralty, and a copy also to Sir Edward Pellew, for his Government in India.

It appears, that on the 14th December last a fleet escaped from Brest, consisting of the following ships, which were previously formed in two divisions, and under separate admirals, though I cannot yet learn from the French whether they were totally independent of each other or not; but the English prisoners imagined that they were to be ultimately connected in some enterprise The two divisions were in the act of parting company when the Sirius fell in with them; and therefore I conclude, their Lordships will have been very easily apprised of the departure of this force from Europe.

One division consisted of	*Guns.*	
Le Imperiale - - -	120	Admiral Lesiegues
— Alexander - - -	80	

	Guns.	
Le Diomede - - -	74	
— Jupiter - -	74	
— Braave - - -	74	
— Comete - -	44	
La Felicité - - -	36	
— Diligente - -	22 (corvette)	
The other division consisted of		
Le Foudroyant - -	84	Adm. Willeaumez
— Veteran - -	74	
— Impetueux - -	74	
— Cassart - -	74	
— Patriote - - -	74	
— Eole - -	74	
La Volontaire - -	46	taken by the Diadem
— Valereuse - -	36	

With respect to the first-mentioned division, it is impossible for me, at present, to afford their Lordships any satisfactory account of its destination, either from my own conversation with the prisoners, or that of the very intelligent officers under my command, who have particularly exerted themselves on the occasion. When I suggested the idea of the Brazils, I was always answered, "Very possible: but we know nothing of that squadron. Admiral Willeaumez has a carte blanche."

With respect to the second-named squadron, whose forerunner, La Volontaire, we have had the good fortune to capture, it appears, that the ships composing it are of the largest class; that they are completely manned; and have on board 1500 marine artillery, with two and three field-pieces in each ship; this marine artillery, however, independent of their complement; though that may be in some degree increased, to enable them to land when

occasion shall offer; for I understand the Foudroyant, which ship mounted 92 guns, has more than 800 on board, the others 750.

Jerome Bonaparte is Captain of the Veteran, with, it is said, a higher commission in his possession; but, whether it is to be opened on a given day at a fixed place, or on the successful issue of his operations, I cannot presume to determine.

La Volontaire was ordered to receive on board all the English troops which had been taken in the transports, and land them at Tenerife, but she was prevented doing so by the falling in with an English cruiser near the island; she then proceeded to 24 North, and lay to three days, crossed the line in the 8° West of Paris, where she also lay to for some time, and not finding the squadron, she came directly to the Cape; and it was supposed by some of the English officers on board, that if it had not been for the sickness among their troops, she would have remained at sea some days longer; but I cannot obtain any satisfactory reason for such a presumption, as Captain Brittell, who commanded La Volontaire, appeared, and naturally so, very anxious to get rid of such a number of prisoners, who rendered his ship almost useless as a cruiser; indeed he told me, in the first half hour's conversation, that as soon as he had landed the prisoners, and procured some refreshments, it was his intention to proceed to sea in search of his admiral.

In deploring his situation, the second day after he came on board, he said to Captain King, that he feared part of his squadron must be sacrificed, for that he thought they would come in here, two at a time, to water and refresh, and that the Veteran would be one of the first.

Having now presented, for their Lordships, a *precis* of the intelligence which I have been able to obtain, and

the movement and probable destination of these squadrons, I request you to assure them, that I shall do all in my power to make the small but zealous squadron I have the honour to command equally efficient in its concert with the army for the defence of this colony, as it was, by its co-operation, in obtaining possession of it.

For this purpose, the Raisonable, Diadem, and Diomede will be moored as close in shore as possible, between the Chavonne and Amsterdam batteries, with the Narcissus and Leda a little to the eastward of the southernmost ships: their Lordships will observe, that this is a position completely defensive, and very much at variance with the one I took up when I only expected the arrival of Admiral Linois with his squadron.

On contemplating on this preceding statement of facts, their Lordships will, I hope, be satisfied, that I have fair and rational grounds for expecting Admiral Willeaumez here with six sail of the line and two frigates: that, from the observations and conclusions of the English officers who were prisoners in the Volontaire, it is a possible case that, for some ulterior operations, Admiral Lesiegues may join the first division in this bay; and I have, in transmitting the intercepted correspondence of Admiral Linois to the Minister of Marine at Paris, and to General Jansens, the late Governor of the Cape, furnished their Lordships with the most unequivocal proofs of the Admiral's intention to revisit that colony in the course of the present month:—therefore, taking together the force which is positively expected—that which most probably will come—and that whose arrival is but a possible case—it will amount to twelve sail of the line, four frigates, and a corvette.

While we are in the expectation of a force so superior

I trust their Lordships will approve of my remaining here with the squadron as long as the season will allow me to do so; but not losing sight of the expediency of being ready to go to sea at a moment's warning, in case we should receive any certain intelligence that the enemy has been dispersed by a gale of wind. In short, at a juncture so peculiar as the present, all the means which I can recommend shall be held ready to apply in such a manner as may be deemed the most advantageous for the public service.

I hope their Lordships will not consider that the foregoing observations and conclusions result from any despondency on my part: the situation that I am placed in is certainly critical, and it is, I conceive, but a proper line of conduct to state every circumstance in its true bearings, for their Lordships' consideration and judgment.

By looking, however, to a happy concurrence of fortuitous events, these squadrons which, when connected, put on a most formidable shape, may, by such contingencies as fleets are ever liable to, particularly in these tempestuous seas, be so reduced and so divided in the practical application of their force, as to make their arrival in that form more to be wished, than it could ever be dreaded in any shape, under the position which we shall immediately occupy between the batteries.

After what I have already communicated, I trust their Lordships will justify my conduct in the detention of the Raisonable; but I shall send La Volontaire to St. Helena with as many men as I can muster without distressing the squadron, leaving it discretionary with the Governor to put the ships under her convoy, if, by a small levy on each, with a detachment of King's troops which are now here on their way from India, he can make the frigate

sufficiently efficient and respectable to take charge of the convoy.

I have the honour to be, Sir,

Your most obedient humble servant,

William Marsden, Esq. HOME POPHAM.

&c. &c. &c.

No. 9.

Sir, Diadem, Table Bay, 20th March, 1806.

ONE of the officers of La Volontaire, an Ensign de Vaisseaux, is a German whom I had formerly met in Germany; and as he brought this circumstance to my recollection, manifesting at the same time a degree of discontent at the treatment he had experienced in the French marine, I made a plea of form in the Vice-Admiralty Court for the condemnation of the frigate to detain him on board the squadron, while I was making arrangements for the prisoners who were to be sent to Europe.

I have lost no opportunity of questioning him, from the most distant to the most direct terms, according to the temper he appeared in at the moment, and am inclined to think he is very positive that Admiral Willeaumez's squadron is not bound to the East Indies, though he declares not to know its ultimate destination: he thinks the two squadrons are to join, but without any positive reason for giving such an opinion; and his own conjectures are, that, when they quit the Bank of Lagallar, where he supposes they are now cruising, that they will go to the Brazils, if they hear we are in possession of the Cape, and from thence proceed to the West Indies.

If this officer should be right in his first conjecture, I do not think the second an improbable one; and under that consideration I shall dispatch a vessel to Admiral Cochrane, with copies of all the letters I have written to

their Lordships on the subject of the squadrons which sailed from Brest.

The advantage of early information of the enemy's motions must be so evident; under almost any circumstance, that I trust I shall be borne out in this decision by the facts which are presented to their Lordships; and if they should view my conduct differently, that they will attribute this measure as entirely originating from an anxiety to forward the public service.

The vessel I have fixed on to go to Barbadoes is the Jack, a small transport brig, whose master is an active, intelligent man.

I have the honour to be, Sir,

Your most humble obedient servant,

William Marsden, Esq. HOME POPHAM.

&c. &c. &c.

No. 10.

(Copy) Table Bay, 13th April, 1806.

HAVING found it expedient to proceed on an expedition to the Rio de la Plata, with the squadron under my command, you are hereby required and directed, if your arrival at this place is prior to the 10th of May, 1806, to make all possible dispatch to join me at Monte Video, after having re-victualled and watered your ship, provided your orders are general, to put yourself under my command, and that you are not ordered by the Lords Commissioners of the Admiralty, or by whom you may have been dispatched to this port, on any other particular service. But in the event of your arrival being subsequent to the 10th of May, you are to exercise your judgment as to the necessity of the presence of his Majesty's ship under your command at this place: and if it shall not appear to you absolutely necessary, upon consulting his Excellency Sir David Baird,

you are to join me as expeditiously as possible at Monte Video.

And if more than one of his Majesty's ships shall arrive at the Cape of Good Hope, and it does not appear to you that the service at this place requires their stay here, you are, in that case, to leave one ship here, sending the others on to reinforce the squadron under my command in succession as they may arrive.

I have the honour to be, &c. &c.

(Signed) HOME POPHAM.

No. 14.

SIR, Admiralty-Office, 6th August, 1806.

I HAVE received and communicated to my Lords Commissioners of the Admiralty, your letter of the 9th of April last, informing them of your intended proceedings with the squadron under your orders.

I am, Sir,

Your most obedient humble servant,

(Signed) WM. MARSDEN.

Commodore Sir Home Popham,

Cape of Good Hope.

No. 4. Admiralty-Office, 2d August, 1805.

MY DEAR SIR,

IT has been thought expedient to detain your sailing till we hear something of the Raisonable, or at least till the Diomede shall arrive at Portsmouth, which I hope may soon be the case, as every day's delay is important.

I have not been able to get the bomb allowed, but have inclosed directions for you to send a frigate off the east coast of America, to procure intelligence. It does not appear to be necessary to look out to the eastward, as little is to be apprehended from that quarter; and it would only create a jealousy in the commanders-in-chief in the

Indian seas, whose commands extend at present to the Mauritius.

I have taken the liberty of inclosing you a letter to our late worthy Fiscal, to whom we are much indebted for his exertions and advice during the last time the settlement was in our possession, and who I am sure will still be happy to render you any assistance that may be in his power.

I am, my dear Sir, very truly, your's,

Sir H. Popham. JOHN BARROW.

No. 5.

Sir, Admiralty-Office, 1st March, 1806.

I HAVE received and laid before my Lords Commissioners of the Admiralty your letter of 13th January last, with the several papers therein referred to, relative to the capitulation of the town and castle of Good Hope.

I am, Sir,

Your most obedient humble servant,

Commodore Sir (Signed) WM. MARSDEN.

Home Popham.

No. 6.

Sir, Admiralty-Office, 27th March, 1806.

I HAVE received and communicated to my Lords Commissioners of the Admiralty your letter of 13th January, inclosing a copy of one to Captain Donelly of the Narcissus, giving an account of his having driven on shore on the Cape and destroyed a French ship of 22 guns, supposed to have been the Bellona; and I have their Lordships' commands to acquaint you, that they very much approve of his conduct on the occasion.

I am, Sir,

Your most obedient humbe servant,

Commodore Sir (Signed) WM. MARSDEN.

No. 24. *(Received Sunday, 1st March.)*

SIR, Admiralty-Office, 28th February, 1807.

I HAVE received and communicated to my Lords Commissioners of the Admiralty your letter of the 27th instant, requesting to be informed when your letters of the 9th, 13th, and 30th of April were received at the Board;—and further requesting that all the letters which you had written to me from the time of your leaving England, up to and including your present letter, to which this is an answer, may be produced at the Court Martial. In reply thereto, I am commanded by their Lordships to acquaint you, that it appears by a note on your letter of the 30th April, 1806, that it was received on the 24th of June following; but it does not appear that any notes have been made on your letters of the 9th and 13th April, 1806, to shew when they came to hand; nor does there appear to be any person in this Office capable of ascertaining the precise date of their receipt.

In regard to your request for the whole of your letters to be produced, I have their Lordships' directions to inform you, that they shall be forthcoming at the Court Martial.

Commodore Sir Home Popham.

I am, Sir,
Your most humble servant,
WM. MARSDEN.

No. 1. A. At the Court at the Queen's Palace, the 11th of January, 1805.—Present the King's Most Excellent Majesty in Council.

WHEREAS his Majesty has received information that the King of Spain has issued a declaration of war against his Majesty, his subjects, and people; his Majesty, therefore, being determined to take such measures as are neces-

vigorous prosecution of the war in which he finds himself engaged, is pleased by and with the advice of his Privy Council to order, and it is hereby ordered, that general reprisals be granted against the ships, goods, and subjects of the King of Spain, so that as well his Majesty's fleets and ships, as also all other ships and vessels that shall be commissionated by letters of marque, or general reprisals, or otherwise, by his Majesty's Commissioners for executing the office of Lord High Admiral of Great Britain shall and may lawfully seize all ships, vessels, and goods, belonging to the King of Spain, or his subjects, or others inhabiting within the territories of the King of Spain, and bring the same to judgment in any of the Courts of Admiralty within his Majesty's dominions; and to that end his Majesty's Advocate-General with the Advocate of the Admiralty are forthwith to prepare the draft of a commission, and present the same to his Majesty at this Board, authorising the Commissioners for executing the office of Lord High Admiral, or any person or persons by them empowered and appointed, to issue forth and grant letters of marque and reprisal to any of his Majesty's subjects or others whom the said Commissioners shall deem fully qualified in that behalf, for the apprehending, seizing, and taking the ships, vessels, and goods belonging to Spain, and the vessels and subjects of the King of Spain, or any inhabiting within his countries, territories, or dominions, and that such powers and clauses be inserted in the said commission as have been usual and are according to former precedents. And his Majesty's said Advocate-General with the Advocate of the Admiralty are also forthwith to prepare the draft of a commission, and present the same to his Majesty at this Board, authorising the said Commissioners for executing the office of Lord High Admiral to will and require the High

and Judge of the said Court, his surrogate and surrogates, as also the several Courts of Admiralty within his Majesty's dominions, to take cognizance of and judicially proceed upon all and all manner of captures, seizures, prizes, and reprisals of all ships and goods that are or shall be taken, and to hear and determine the same according to the course of Admiralty and the laws of nations, to adjudge and condemn all such ships, vessels, and goods as shall belong to Spain, or the vessels and subjects of the King of Spain, or to any others inhabiting within any of his countries, territories, and dominions; and that such powers and clauses be inserted in the said commission as have been usual and are according to former precedents; and they are likewise to prepare and lay before his Majesty at this Board a draft of such instructions as may be proper to be sent to the Courts of Admiralty in his Majesty's foreign government and plantations, for their guidance therein; as also another draft of instructions for such ships as shall be commissionated for the purposes aforementioned.

ELDON, C. CASTLEREAGH, W. GRANT,
MONTROSE, MULGRAVE, CHA. MORGAN,
CAMDEN, HAWKESBURY, EVAN NEPEAN.
MELVILLE, ELLENBOROUGH,
SIDMOUTH, W. PITT,

No. 12.

SIR, Cape Town, May 27, 1806.

I HAVE had the honour of receiving, by his Majesty's ship Adamant, the duplicate of a dispatch from Lord Viscount Castlereagh, bearing date the 10th of September, 1805, and conveying to me his Majesty's commands to detach from this colony such a proportion of the troops under my command, as might be necessary for the security of the British possessions in India.

I am most happy to repeat, that general tranquillity, which now reigns in that quarter, will render it unnecessary for me to make such detachment.

I have the honor to be, &c.

Rt. Hon. Wm. Windham, &c. &c. D. BAIRD.

(Received 4th September.)

No. 13.

By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

WHEREAS we think fit that you shall forthwith return to England, you are hereby required and directed to furnish Rear-Admiral Stirling (by whom you will receive this) with every information in which you may be possessed, relative to the service on which you have been employed, as well as the Cape of Good Hope as on the coast of South America, and to the state of the country in the last-mentioned quarter; and having so done, take your passage to England accordingly, in such ship as the said Rear-Admiral shall appoint.

Given under our hands, the 28th July, 1806,

To Commodore Sir Home Popham.

J. MARKHAM.
C. D. M. POLE.
H. NEALE.

By command of their Lordships,

B. TUCKER.

[*See Chronological List at the end, for a description of the other Numbers, not admitted in the Minutes.*]

The Right Hon. Lord Viscount MELVILLE, sworn.

Sir HOME POPHAM.—Q. Will your Lordship have the goodness to relate to the Court all the circumstances within your recollection, respecting the communications that I held with Mr. Pitt and your Lordship, collectively or individually, as relating to yourself, on the subject of a proposed expedition to South America, provided they do not interfere with any state secret?

A. Soon after I came to the head of the Board of Admiralty, I had occasion to learn that the administration preceding that of which I formed a part, had communications with General Miranda relative to some projects he entertained relative to South America. I did not immediately give much attention to that subject, because, not being then at war with Spain, it did not occur to me how consistently with that situation the government of this country could take any active part. In the progress of the summer of 1804, and particularly towards the autumn of that year, I had little doubt in my own mind, from the official information I had occasion to receive at the Board of Admiralty, and from the communications with the heads of other public departments,—I had little doubt in my own mind,—that such war must soon take place; I therefore thought it my duty through Sir Evan Nepean, Sir Home Popham, and others, who, I had reason to think, were acquainted with what had passed under former administrations, to inform myself more minutely relative to the views and projects of General Miranda. I likewise had more than once confidential conversations with General Miranda himself; the result was, an opinion, that although it might not be wise or expe-

the extent of his projects, it was of the utmost importance to this country so far to watch the progress of his operations, as to make use of them if they could be made subservient to the purpose of opening the South American market to the trade and manufactures of this country; and upon that principle, I had, as upon every other public subject, daily communications, both in town and at Wimbledon, with Mr. Pit, as the head of the government with which I was connected: the subject is the more familiar to my consideration, because for many years past, particularly in the year 1796, I had occasion to consider it very maturely, with the view of preparing, in concert with the then Board of Admiralty, operations against South America upon a very extensive scale. I was at that time Secretary of State for the War Department. In consequence of the conversations I had with Mr. Pitt, as already mentioned, toward, I think, about the month of October or November, 1804 (it was nearly about the time the war broke out about the capture of the four Spanish frigates), I desired Sir Home Popham to attend me, in order that he might be at hand to attend Mr. Pitt and myself at any time we might have occasion to talk with him. I see the letter is dated the 1st Dec. 1804. [His Lordship read the letter of that date, as follows:]

Letter from Lord MELVILLE *to Sir* HOME POPHAM, *dated Wimbledon, Dec.* 1, 1804.

DEAR SIR HOME,

General Miranda is not more importunate with you than he is with me; but he unfortunately supposes us at war with Spain; we are not so, nor have we heard a word from Mr. Frere, even of his having left Madrid. The negociation may be therefore still going on, and the same difficulties subsist with regard to the operation suggested by Colonel

We must hear soon, and if we do not within a day or two, I still think I shall send for you to come up upon leave of absence. I have been looking about, but I do not find any thing more ready than the Diadem, in which I can place you; and it will be a few days before even she is commissioned.

(Signed) MELVILLE.

Some time after that, Sir Home Popham came to town, and I had many conversations with him in consequence of the various conversations I from day to day had on the subject with Mr. Pitt, and these conversations continued during the remaining period I continued at the Admiralty. I ceased to be in that situation immediately after the 8th of April, 1805. I had many interviews with Mr. Pitt after that period, and indeed during the whole period of his life; till our final separation at Bath, the beginning of the year 1806. But from the time I ceased to be his colleague in office, I made it an invariable rule to avoid all conversations with him upon subjects of a public or confidential nature, so that from my own knowledge I can speak to nothing after the 8th of April, 1805.

Q. Does your Lordship recollect directing me to attend Mr. Pitt at Wimbledon some time in the month of October 1804, when there was nobody present but your Lordship and Mr. Pitt, and that I remained the whole evening explaining all General Miranda's views, and discussing the objects to which he was anxious to call the attention of this country?

A. I remember perfectly well such interview taking place, but I cannot charge my memory with the precise month; it was in 1804.

Q. Was it on the night that Mr. Pitt afterwards went down to Weymouth to the King?

Q. Does your Lordship recollect desiring me to send for General Miranda—after conversing with him upon every subject relative to South America, to draw up a specific memorial on that subject, and to explain, to the best of my judgment, the readiest way of embracing all the views which General Miranda had from time to time submitted to the government, either through me or by himself?

A. I recollect perfectly having received such a memoir, being very glad to know the full extent of General Miranda's views; but certainly avoiding to commit myself or the British government in them beyond the object I have already stated; I mean the market of South America, upon which subject I have certainly entertained a most anxious wish almost from the time I had occasion to take the public concerns under my more immediate consideration, and that anxiety has certainly never diminished, but much increased in consequence of all the events which for some years past have taken place in the East Indies, the West Indies, and, above all, upon the Continent of Europe.

Q. In consequence of your Lordship's great pressure of business, it is possible you may not recollect all the circumstances relating to this object as well as myself, who had nothing else to attend to; but you may possibly recollect having desired me to draw up the memoir in question?

A. I certainly employed you so to do, and I thought I had so expressed myself before.

Q. Does your Lordship recollect that when you did me the honour to appoint me to the Diadem, it was for the sole view of carrying into execution either some part or

the whole of the plan submitted to your consideration in the above recited memorial.

A. I do recollect that when Sir Home Popham was appointed to the Diadem, the object then immediately in view was to co-operate either with or without General Miranda, in such objects mentioned in the memorial as might be thought conducive to the interests of Great Britain.

Q. Does your Lordship recollect, while you were at the Admiralty, whether the intention of employing me on this subject was so far advanced, as to bring under your contemplation the part on which I was positively to be employed, and the limited discretion to pursue, if successful, the first object, or to follow whatever other might appear to me most salutary in advancing the general view of opening the markets of South America to the active enterprise of our merchants.

A. I know certainly the great object was the South American market, but I cannot speak to any further details at that time, as the business was then not so far advanced as to be the subject of detached instructions, which would have affixed the particulars more in my memory. It occurs to me at this moment as not improbable, that the Coast of South America, in the vicinity of Trinidad, was probably at one time looked upon as a probable scene of operations.

Q. Upon hearing the capture of Buenos Ayres, did your Lordship consider it an acquisition materially advancing the great object which Mr. Pitt and your Lordship had in view with respect to South America.

A. No doubt Buenos Ayres appeared to me as highly beneficial for the object I have already mentioned to be in view; but I am by no means

sure if I may not take that impression from the circumstance of Buenos Ayres having been one of the specific objects in view when the armament was in contemplation in 1796.

Q. Can your Lordship speak to the fact of my having been confidentially employed on various objects, both in the late and present war by some of the members of the cabinet, particularly by your Lordship and Lord Grenville?

A. I certainly know that Sir Home Popham was confidentially employed by different members of the cabinet at the times he alludes to.

Q. Is it in your Lordship's recollection that in the execution of those various confidential services, circumstances arose which were not at the moment of writing my instructions provided for, nor indeed could they be; that I, under those circumstances, exercised a very enlarged discretion, to obtain the great object for which I was so employed?

A. I am ready to allow that Sir Home Popham has been employed on many confidential occasions, and met with the approbation of government in the execution of them; but I trust I shall not be called upon for an explanation of any particulars.

The PRESIDENT—Q. Does your Lordship recollect at what time it was that Sir Home Popham was appointed to the Diadem?

A. I can't recollect the precise time, except from the letter of the 1st Dec. 1804; it must have been in the month of Dec. 1804.

Q. Does your Lordship recollect whether the negotiations that were going on with the court of Spain for an amicable adjustment of the differ-

ences between her and this country, had or had not terminated unsuccessfully before that time?

A. I can't from memory fix the precise time, but I make no doubt it was a short time after the date of this letter, as I remember the account came recently before the meeting of Parliament.*

Q. Was Sir Home Popham appointed by your Lordship to the Diadem with the view of carrying on offensive operations against Spanish South America, and what part of it in particular?

A. I believe Sir Home Popham was appointed to that ship with a view of co-operating with General Miranda, to the extent of taking advantage of any of his proceedings, which might lead to our obtaining a position on the continent of South America, favourable to the trade of this country; but I do not recollect any specific place being fixed on.

Q. Your Lordship has said that you had many confidential communications with General Miranda on the subject of his views, and that the result of those conversations was an opinion, that although it might not be wise or expedient, nor perhaps within the means of this country at that time, to commit themselves fully to the extent of his projects, it was of the utmost importance to the interests of this country, so far to watch the progress of his operations, as to make use of them if they could be made subservient to the purpose of opening the South American market to the trade and manufactures of this country; was that the object your Lordship had in view when you appointed Sir Home Popham to the Diadem, and did your Lordship continue to entertain the same objects and to the same extent, only, during the

remainder of the time that your Lordship presided at the Admiralty.

A. It was with the view mentioned in the question that I appointed Sir Home Popham to the Diadem, and I do not recollect that during the period afterwards, when I remained at the Admiralty, government had in contemplation any plan upon a more extensive footing.

Q. Was Sir Home Popham appointed by your Lordship to any command authorizing him to attack any part of South America?

A. Certainly not, in the proper sense of those words.

Q. Is there any note or official document in the records of the Admiralty, to your Lordship's recollection, stating the object for which Sir Home Popham was appointed to the Diadem.

A. I cannot speak with absolute certainty, but I should think there is not.

Q. Your Lordship has said that Buenos Ayres was one of the specific objects in view when the armament was in contemplation in 1796; had your Lordship that object in view at any time since the breaking out of the present Spanish war, up to the time your Lordship retired from office?

A. At all times and in every conversation that I had with Mr. Pitt on the subject, I make no doubt Buenos Ayres was often the subject of discussion. My reason for being confident in that opinion is, that in all the considerations I ever gave to the subject of South America, whether the attack was to be made on a smaller or a larger scale, I always considered the Rio de la Plata as the most important position for the interest of Great Britain upon that side of South America.

Q. I would take the liberty of asking your

Lordship, whether with those opinions it was determined on by His Majesty's then ministers to make any attack on Buenos Ayres, and whether Sir Home Popham was appointed to any command for that purpose?

A. I do not believe that his Majesty's government had ever come to any resolution of making an attack on South America; and it will be recollected that I have already stated, that it was only for a few months after the beginning of the year 1805, that I remained in the government.

Q. When Sir Home Popham was employed by his Majesty's ministers, and having used his discretion, and his conduct was approved of, was he employed as a captain in his Majesty's navy, or on services of a nature distinct and different from the naval service?

A. Chiefly upon those of the latter description. A circumstance in the Red Sea might be an exception.

Sir HOME POPHAM—Q. Was it customary to enter a minute at the Board of Admiralty when an officer was selected by the cabinet, or the leading members of it, to make the necessary arrangements for a secret service, which was afterwards to be submitted to their consideration?

A. Certainly not, to the best of my knowledge.

WILLIAM STURGES BOURNE, Esq. called in, and sworn.

Sir HOME POPHAM—Was you one of the Secretaries of the Treasury in the month of July, 1805?

A. I was.

Q. Did I communicate to you at any time during that month, some confidential information

which I had received relative to the Cape of Good Hope?

A. I remember your making some such confidential communication, and I believe it might be in the month of July, 1805.

Q. Can you state to the court for what purpose I made that confidential communication to you?

A. The communication was made to me for the purpose of conveying it to Mr. Pitt.

Q. What was done by you in consequence of it?

A. I communicated the substance of it without loss of time to Mr. Pitt, even, I believe, while Sir Home Popham remained in my own room at the Treasury. Mr. Pitt immediately authorized me to make further inquiries on the subject in the quarter from which the communication was stated to be derived. I immediately obtained an interview with one of the gentlemen, from whom I understood the intelligence had been received, and carried him to Mr. Pitt on the following day; the result of those interviews was a complete confirmation of the statement made by Sir Home Popham, and Mr. Pitt instantly determined to take the necessary measures for the execution of an expedition against the Cape.

Q. Do you recollect whether you received the instructions from Mr. Pitt either to get the intelligence I gave you confirmed, or to obtain some collateral proof of it, antecedent to my seeing Mr. Pitt in consequence of the original communications which you made to him?

A. Mr. Pitt, I apprehend, directed the inquiry

precise intelligence that could be procured, and I believe, but I am not positive, that it must have been antecedent to his seeing Sir Home Popham on this subject. Upon being reminded of it I think I went down to Mr. Pitt and returned to Sir Home Popham in my room, and accompanied him to Mr. Pitt; the names of the gentlemen from whom the information was derived were stated by Sir Home Popham, and I believe he did accompany me to a house in Pall Mall, where one of them he thought might be found.

Q. Was you present at my conversation with Mr Pitt on the subject of the Cape of Good Hope?

A. I certainly was.

Q. Can you state to your own knowledge whether any expedition to the Cape was in contemplation at the moment I proposed the one in question to Mr. Pitt?

A. I am quite sure that Mr. Pitt had no such expedition in his contemplation at the time Sir Home Popham made this proposal, and I have no reason to believe that any other of the king's ministers had such an object in view.

Q. Do you recollect my taking the liberty, which I did in consequence of the confidence I thought Mr. Pitt reposed in me, when he expressed a doubt of what military officer should command the expedition, of subnitting the name of one for his consideration?

A. I have a faint recollection of it; but it is not sufficiently strong to enable me to speak positively on the subject.

Q. Do you think from the best of your recollection, or from any circumstances you may have

heard afterwards from Mr. Pitt, that it was the officer who did command the expedition?

A. I have a strong impression on my mind that Sir Home Popham was anxious that Sir David Baird should command the army.

The Court—Q. In the conversations at which you were present between Mr. Pitt and Sir Home Popham, was it determined or proposed to attack the Spanish settlements in South America after the attack on the Cape, in the event of that attack proving successful?

A. I recollect no proposal being made in that conversation respecting the Spanish settlements in South America. I certainly have at another time heard Mr. Pitt state his views with respect to South America.

WILLIAM HUSKISSON, Esq. called in, and sworn.

Sir Home Popham—Q. Was you one of the Secretaries of the Treasury in the month of July, 1805?

A. I was.

Q. Do you recollect my taking leave of Mr. Pitt in your room at the Treasury, on or about the 29th of July, 1805, previous to my sailing for the attack of the Cape of Good Hope.

A. I have no precise recollection of the date, but I recollect going into my room at the Treasury, and finding Mr. Pitt and Sir Home Popham there together. I can't say I particularly recollect any taking leave.

Q. Do you recollect my telling you Mr. Pitt had desired I would give you the names of some

any further information upon the subject of South America?

A. I recollect generally that frequent conversations passed between Mr. Pitt and myself, in which he expressed an anxiety to obtain every possible information respecting South America, and in which he conveyed to me his desire that I would take every opportunity of procuring him such information, and collect and keep together such as might be procured; but I do not specifically recollect the precise conversation that took place on your taking leave; but I have by Mr. Pitt's desire, more than once, conversed with Sir Home Popham on the subject of such information.

Q. Had you any conversation with Mr. Pitt in the course of the year 1805, respecting South America, and particularly Buenos Ayres; and did you by his desire take any steps respecting the settlement?

A. I have already stated that I had conversation with Mr. Pitt on the subject of South America, and I might add partfcularly Buenos Ayres; and I did take certain steps by his desire respecting Buenos Ayres.

Q. Will you have the goodness to state the nature of those conversations generally, and the steps you took; but I do not wish to exact any disclosure that would either affect the interest of the state or individuals, however the result of such disclosure might be of essential service to me in my situation.

A. I believe almost every occasion that Mr. Pitt conversed with me on the subject of South America, grew out of some incident or occurrence that called his attention to that part of the world particularly. I see among other instances, that a pa-

son brought to me a plan or engraved chart of the Rio de la Plata, which I now hold in my hand, and which had been, as he recently informed me, published at Paris, being taken from the depot of the King of Spain, at Madrid; and he added, that he had intelligence which induced him to believe that that plan might shortly be of use to some part of the French navy who would probably find their way to that settlement: knowing, as I did, that the person who gave me this information was one in whom Mr. Pitt was disposed to place reliance, I of course felt it my duty to communicate to him the plan, and what he had stated to me on this occasion in former conversations that had passed between us. Mr. Pitt stated to me generally, as he had frequently stated before, the views he entertained with respect to South America; that he conceived it a most essential object for this country to use its naval superiority, and the facility of that superiority afforded in extensive operations against South America, in case we should be obliged to continue the war, as he apprehended we should if the success of the confederacy then forming on the continent did not correspond with his wishes on that subject; that he thought his plan of operations most essential not only to the interests of this country separately considered, but also with a view to prevent the French themselves from doing that which he did not doubt they would do in case of any neglect; namely, getting possession of the principal positions and avenues to that extensive empire; that he therefore gave general credit to the person who furnished that plan and the information, but hoped we should be beforehand with the enemy, as our naval means were so much superior

a delicacy in stating them, as the safety of some individuals may be endangered: I can only state very generally, that by Mr. Pitt's desire, I did take measures for procuring further intelligence respecting the state of Buenos Ayres up to the latest possible period; and that a series of questions, one of which went to the very point whether any French force had arrived, or was immediately expected there, was put through such a channel as was likely to furnish a satisfactory answer to such questions, and also to take preliminary steps upon the spot at Buenos Ayres, with a view to facilitate its capture by any British officer: these steps were taken very soon after this information was given, as Mr. Pitt expressed considerable anxiety that nothing should be left unprepared or undone to frustrate what he supposed to be the intentions of the enemy; and to accomplish his own at that settlement. I should only add, that Mr. Pitt mentioned in his conversation Sir Home Popham, as a person with whom he had conversed, and who had given him information respecting these subjects.

Q. Were the views which Mr. Pitt had in forming the confederacy on the continent, answered?

A. I certainly conceive not.

Q. Do you know of any political objection existing at the time I sailed to the Cape of Good Hope to prevent my having received some instructions, or some provisional instructions on the subject of Mr. Pitt's views towards South America?

A. I can state that Mr. Pitt stated to me in conversation, a political objection which had a certain weight with him at that time for not undertaking the immediate operations against South America; but I cannot positively

say, whether in case that objection had not existed, Sir Home Popham would then have received instructions to proceed to that part of the world, or not.

Q. Was that political objection removed by the complete failure of the views which Mr. Pitt had of forming the confederacy on the continent?

A. I conceive it was.

Q. I think you stated that Mr. Pitt desired you to take some preliminary steps with respect to Buenos Ayres, as in the event of failing in his views on the continent and the continuation of the war, it would be of great importance to commence some operations in South America, and still greater to anticipate the supposed views of the French towards that country?

A. That is certainly the substance of what I stated.

Q. Do you know of any circumstance that happened that occasioned him to change his views, as to the value he set on the possession of South America for the purpose of introducing British manufactures into that country?

A. I believe his views with respect to South America were by no means confined to the objects here mentioned, of introducing British manufactures; but I have no reason to believe that any of his views with respect to that part of the world, were changed.

Q. Do you not know, from conversations with Mr. Pitt, previous to the failure of the then continental alliance, that it was his hope and expectation that he should be able to detach Spain from her alli-

him not to undertake immediate operations against Spanish America.

A. I certainly can state what Mr. Pitt's views, in these conversations, were on this subject; he was personally very far from entertaining any sanguine hope or expectation that Spain would be detached from her alliance with France; but one of the principal powers of the confederacy then forming, entertaining a different expectation, he acted in deference to her wishes rather than to his own expectation on the subject, from a wish to conciliate that power—and that was the political objection I alluded to.

Q. I need scarcely ask you whether Mr. Pitt, having that political objection against making an immediate attack on Spanish South America, did at any time communicate to you that Sir Home Popham had either a positive or a provisional order to attack Buenos Ayres after his attack of the Cape, in the event of his success in that enterprise?

A. I certainly never understood from Mr. Pitt, that Sir Home Popham had such positive or provisional instructions.

Q, Did you take any further step respecting Buenos Ayres, than by means of enquiry from individuals?

A. I did.

Q. Was any force provided either in the War Department or the Admiralty, or applied for for the purpose of an expedition against Buenos Ayres, in consequence of the information obtained?

A. I do not know from any conversations with Mr. Pitt, that any force was applied for, or pro-

Q. Do you not know, from conversations with Mr. Pitt, that he had not the attack of Buenos Ayres in contemplation, after the attack on the Cape of Good Hope, with the event of that enterprise being successful?

A. From conversations with Mr. Pitt, I conclude that any attack on Buenos Ayres was not in the actual contemplation of Mr. Pitt at the time Sir Home sailed for the Cape of Good Hope.

The Court—Q. After the removal of the political objection before alluded to, was any force prepared or sent for the purpose of an attack on Buenos Ayres?

A. I conceive that that political objection was not completely removed until the defeat of the Prussian army at Austerlitz. That event took place on the 3d of December, 1805, and when the intelligence of it and its consequences was received in this country, the state of Mr. Pitt's health was such as to prevent his attending to the concerns of the state, or to allow my having any conversation with him on the subject.

Sir H. Popham—Q. Was any preliminary step taken for the prosecution of an attack on Buenos Ayres, in which the Admiralty was at all accessary?

A. A step was taken with a view to prepare and facilitate the execution of any attempt that might be made upon Buenos Ayres, to which by their signature the Lords of the Admiralty were accessary.

The Prosecutor—Q. When?

A. In the summer of 1805.

previous or subsequent to the sailing of Sir Home Popham?

A. I cannot precisely say, I believe after.

The Court adjourned until Nine o'clock the next morning.

FOURTH DAY.

Tuesday Morning, Nine o'Clock.

WILLIAM MARSDEN, Esq. called in, and sworn.

Sir H. Popham—Q. How long have you held any official situation under the Board of Admiralty?

A. Upwards of twelve years.

Q. Was Admiral Stirling directed to evacuate the River de la Plata?

A. I do not recollect.

Q. Do you recollect that any force, as a stationary force for the Cape, was sent there after the receipt of my letter of the 9th of April, 1806, stating the arrangement I had made for going on the east coast of South America, with the squadron under my command?

A. The Sampson, I think, was sent as a ship intended for the Cape of Good Hope station; and I believe that shortly after Sir Thomas Trowbridge was ordered thither from the East Indies.

Q. When did the Sampson leave England?

A. I do not recollect the precise date.

Q. Was the Sampson ordered to call at the Rio de la Plata.?

Q. Could you then consider her as a ship ordered directly to the Cape of Good Hope, for the immediate protection of it?

A. Not direct.

Q. Do you recollect when I was employed in Russia, that I had several commanders in the Navy put under my orders?

A. I do not recollect the fact, though I have no reason to doubt it.

THOMAS WILSON, Esq. called in, and sworn.

Sir H. Popham:—Q. I believe, Sir, you are a merchant of London, and have had considerable intercourse with the Rio de la Plata?

A. Yes, I have.

Q. Do you recollect my having had several conversations with you on that subject, in the summer of 1805?

A. Yes, I do. I think about the month of June, it was respecting the produce of the country, and the strength of the country from what I could collect from persons I had employed there. The result was a communication of all the information I got from three certain persons, and I made an appointment with one of them to go up to Mr. Pitt with Sir Home Popham, on his return from Portsmouth.

Q. Did you endeavour to persuade me to impress upon Mr. Pitt's mind the great advantage of a strong hold in South America?

A. Mr. Pitt I never saw personally on the subject, as the appointment did not take place, in consequence of an intimation from Sir Home Popham

I should hear from Mr. Pitt. Since the year 1802, I have been in the habit of trading to that country by license, in neutral vessels; and at times to Mr. Fawkener, and to Sir Stephen Cottrell, I have suggested the great consequence the trade of that country would be to this country, and how easily it might be effected in British vessels, the place being so weak.

Q. Did you ever mention this to the Board of Trade?

A. Yes, I did several times.

Mr. THOMAS BROWNE called in, and sworn.

Sir. H. POPHAM—Q. Was you master-attendant of the Cape, after its capture in January, 1806?

A. I was.

Q. Did you consider the Cape in a perfect state of security after I sailed from it with my squadron for the Rio de la Plata?

A. I did.

Q. Do you think Sir David Baird so considered it, from any conversations you had with him on the subject?

A. I do.

Q. Did Sir David Baird ever consult you about placing any batteries; and what did he say to you on the subject of the defence of the Cape?

A. Sir David Baird never consulted me about placing batteries, but he told me that he had erected additional batteries for the protection both of Table Bay and Simon's Bay. I have gone to the batteries a dozen times, and have seen the different batteries. I have heard Sir David Baird

Bonaparte, with 10 or 12,000 of his army, would come to attack the Cape, he would give him such a drubbing he would wish himself back in his own country again; and I have heard Sir David Baird say that all the round towers, and different batteries, were in complete and good repair; and it was impossible to make the Cape very little stronger than what it really was.

Q. Was you at the Cape when the Cannoniere French frigate anchored there?

A. Yes.

Q. Where did she anchor?

A. She anchored in False Bay, nearly as I have marked in the chart delivered to the Court, outside both Noah's Ark and the Roman Rock. She never came into Simon's Bay.

Q. If I had been lying in Table Bay, with the whole of my squadron, do you think I should have been able to have taken that frigate?

A. I do not.

Q. If I had been lying in Simon's Bay, under the circumstances of wind and weather, when she came in from the eastward, or the general circumstances of wind and weather at that time of the year (May, I believe), and with the commonest look-out on the part of the enemy, do you think it possible that I could have taken her?

Y. I do not.

Q. State to the Court your reasons.

A. When the Commodore was lying at anchor in Table Bay with the most part of his squadron, there was a signal made from the tower on the Lion's Rump, that there was an enemy's cruiser bringing to a ship in the offing, and a signal was

made for the Leda and Narcissus to prepare to slip and chase the said ship, but it continued calm all that night and all the next day in Table Bay, and she had a breeze in the offing; and I think it was about six o'clock the next evening when the Narcissus went to sea; and the vessel that she had boarded when she came in I went on board, and found that the enemy's cruiser had fired a shot right through her main-mast, and rendered it useless; and she had told the officer who had boarded her from the French cruiser (who said it was the Piedmontaise) that the Cape was in the possession of the English, which prevented her coming in, and our capturing her; as she would shortly have been in the calm, and the current would have brought her in.

COURT—Q. What month was this in?

A. The latter end of March or beginning of April. I am almost certain it was March.

Sir HOME POPHAM—Q. When you say the French frigate would have got into the calm, and been captured, I suppose you mean that she would have been thus completely under the fire of the batteries?

A. I do; both under the fire of the batteries and under the guns of the ships.

Q. If the Piedmontaise had not received the information of the English being there, and had attempted to come in, could she not, if the breeze had continued with her till she had discovered our ships in Table Bay, have made her escape, unless we had some cruisers on the outside of her?

A. I am certain she could.

to you, why, in all probability, I should not have been able to capture the Cannoniere, if I had been lying in Simon's Bay with all my squadron.

A. Ships coming into False Bay, round the Cape of Good Hope, at a considerable distance; on account of two rocks called the Bellows and Anvil, stand over towards Cape Hang-lip, for the purpose of getting into the true breeze, avoiding the current, which generally sets out on the south part of the bay, and to keep to the northward of the Whittle Rock; by that means, Simon's Bay is clearly exposed, and any ships lying there at anchor: on that account, I believe that cruisers would make private signals, and I am certain that the Cannoniere was in possession of the private signals used by the Dutch at the Cape; as the officer, who was made prisoner with the boat's crew, said she had dispatches for Governor Jansen, the Dutch governor; and also, the wind on that day was, on the south side of that bay and Simon's Bay, light and variable, and she kept working in the north side of the bay the whole time, till she came to an anchor. The ships that were lying in Simon's Bay at the time were the Rolla (refitting), a transport, and two or three merchant vessels; perhaps more.

Q. As you say you know the Cannoniere had the private signals of the Dutch, I suppose you imagined she would naturally have used them, if any man of war had been lying in Simon's Bay.

A. I think she would.

Q. At what distance can ships lying in Simon's Bay be fairly made out by cruisers coming from the eastward?

Simon's Bay, while there is a breeze both in the eastern and southern parts of the bay?

A. Yes; it happens sometimes five days in the week.

Q. When did you leave the Cape?

A. About the 22d of August.

PROSECUTOR—Q. On what day did the Cannoniere come to anchor, as you have described?

A. I am sure I do not remember.

Q. Was it on the 30th of May?

A. I believe it was.

Q. After Sir Home had left the Cape?

A. Yes.

COURT---Q. If the French frigate, supposed to be the Piedmontaise, had not been prevented from going into the Cape, by speaking the vessel you have mentioned, and had got into the calm, could she have anchored out of the reach of the batteries?

A. She could.

Q. If a squadron of ships had been at anchor in Table Bay, could she have anchored out of the reach of their guns?

A. Most certainly she could, out of the reach of all the guns in the world.

Q. If she had got under weigh at any time, is it not probable that some ships of the squadron might, at the same time, get under weigh to chase?

A. They might, or they might not; as the wind on the north part of the bay begins to blow about eleven o'clock, and sometimes, as is most general, at four o'clock in the afternoon, before

the breeze is all over the bay from the south-east; while in the offing (I mean the outside of Green Point), there is a slight breeze between S.W. and W.S.W.

Q. Were you at the Cape when the Volontaire was captured?

A. I was.

Q. When she had anchored, if there had not been any ships of war at anchor in the bay, or cruising without it, might she by cutting her cable have got to sea, and escaped?

A. Where she anchored she would not, as there was little or no wind when she let go her anchor, as she was between the Amsterdam battery and Chevant, within musket-shot, and red-hot shot in the furnaces; and I am sure she would have been sunk or blown up before she would have got without the reach of the guns, from the light air that was at the time from the westward.

Q. Did she strike before entering, or after she had anchored?

A. The sails were all clued up, and the men were going up to furl the sails, and the anchor was either gone or letting go at the time.

Q. Did she make any private signals to the Cape before she anchored?

A. I cannot say whether she did or not.

Q. Did you see the officer of the Cannoniere who was taken?

A. Often.

Q. Did he know, or did he suspect, the Cape was in possession of the English?

A. No, I believe he did not; to the best of my knowledge he knew nothing about it.

Q. Do you know whether the General or the Commodore had the private signals of the Cape?

A. I am certain they both had them.

Q. Then, if a ship going into Simon's Bay had made the private signal to any of his Majesty's ships lying there, that signal could have been answered?

A. It might certainly.

Q. You have said, that the ships lying in Simon's Bay might be clearly distinguished from a ship at sea four leagues distance---Is the land under which the vessels lie in Simon's Bay high or low.

A. High.

Q. Do you think ships lying under high land can be distinguished by a ship four leagues off?

A. I do.

Q. Do they lie near the land, or at a distance therefrom?

A. They lie pretty near the land, and on the W.N.W. side of the bay, where it is a very white, high sand hill; any ships lying there must be discovered by ships who keep the north side of False Bay.

Q. If the Cannoniere had gone into Simon's Bay as incautiously as the Volontaire did into Table Bay, could she have anchored out of the reach of the batteries?

A. She could not; there is no ship can anchor in Simon's Bay out of gun-shot.

Q. If she had anchored within reach of the batteries, could she, by cutting her cable, have put to sea, and escaped?

A. She could not; as it fell calm in Simon's Bay almost the instant she anchored in False Bay.

Q. I mean generally to ask, if a ship, anchoring in Simon's Bay under the fire of the batteries, as you say they must be, could, by cutting her cable, escape if it was not calm?

A. I do not think she could escape; because the batteries are so immensely strong, she must be either sunk or blown up: as they did always keep the shot in the furnaces whenever any vessel was seen.

Q. How near to the batteries is it necessary a ship should anchor?

A. About half-gun-shot; to have a good birth you cannot go too close in.

Q. If at the time the Cannoniere anchored; ships had been cruising without Simon's Bay, and other ships of his Majesty had been at anchor within it, is it probable that she could have escaped?

A. I do not think she would have come there at all, if there had been ships cruising outside; because she would have seen them before, and made the private signal to them.

Q. You have already said, that private signals might have been answered?

A. Yes.

Q. Were there any ships under sail off the Cape when the Volontaire went into Table Bay?

A. There were two.

Q. Why, then, do you suppose the Cannoniere would not have gone into Simon's Bay, if ships were cruising off; as the Volontaire did go into Table Bay, although ships were cruising off?

A. Because I suppose she would have the private signals; I suppose the one would have taken

came from the Isle of France, in the intercourse of Batavia, and I suppose she had the private signals, as she had dispatches for the Cape; and the other, coming from Europe, I did not suppose she had the private signals.

Q. Did you see the Captain or Officers of the Volontaire?

A. I did, the whole of them; and dined with them often.

Q. Did you know, from them, that they were bound to the Cape?

A. I never had any conversation but with one of them, who spoke English; for I do not understand French. I never heard him mention particularly that they were coming to the Cape; but understood from him, that his Admiral was to be found cruising off Le Guillas; and that the Volontaire came in for the purpose of getting rid of their prisoners, as they were then sickly, and for water.

Q. Were any additional batteries raised on that part of the coast where the English army landed?

A. I do not know.

Q. If an enemy had attempted to land in the same place, would the presence of ships of war render their landing more difficult?

A. I should think so.

Q. When Sir Home-Popham sailed from the Cape with his squadron, what vessel of war was left in the Bay?

A. I was not at the Cape at the time Sir Home sailed, but arrived the next day.

Q. After your return to the Cape, how long

A. Only the brig that I had the command of, the Rolla (mounting eighteen guns); and about a fortnight or three weeks afterwards, Capt. Bligh, in the Porpoise, and the Woolwich horse-ship, with the St. Clair Indiaman, arrived in their way to New South Wales.

Q. Any others?

A. Then came the Lion, of 64, a good while afterwards; about two months afterwards, July I believe: the Medusa also, with the Lion and a convoy. The Adamant, Capt. Stiles, and the Protector gun-brig, arrived two or three days after Capt. Bligh, before the Lion. The Lion went to India, and the Medusa to the Rio de la Plata; they staid about a week at the Cape. The Adamant staid about fourteen days altogether; the Porpoise staid about three weeks.

Q. Any others?

A. Not any others.

Q. State the period of your return to the Cape?

A. I believe it was the 15th of April.

Q. How long did you remain there afterwards?

A. Till the 21st or 22d of August, 1806.

Q. Between the time of your return to the Cape and of your leaving it, did any reinforcement of troops arrive at the Cape?

A. Yes.

Q. Do you know how many?

A. One regiment from England, and 200 men, or thereabouts, who were prisoners on board the

corps, raised whilst I was there, under the command of Colonel Græine.

Q. Within the same period, did any number of merchant vessels arrive?

A. Two or three English vessels, and all the rest neutrals. I do not know how many besides those that came under convoy.

Q. Do you recollect if the Cannoniere made any signal to the Cape before she anchored?

A. I do not recollect it.

Sir HOME POPHAM.—Q. You have said, that you are certain that Sir David Baird and myself were in possession of the Dutch private signals: I suppose you mean the colonial signals, or the signals made from the signal stations?

A. I certainly do mean the colonial signals.—The same man who was signal-man to the Dutch was the signal-man to the English; he has been there about twenty years.

Q. Do you mean to say, that I had any of the Dutch private signals?

A. I do not mean the signals made at the Cape at Lion's Rump.

Q. Could the merchant ships have lain, either in Simon's Bay or in Table Bay, completely protected from any insult of the enemy, by being properly moored in either of those bays.

A. Certainly they could in perfect safety. As you have said, it is generally calm in the day-time in Simon's Bay, while there is a strong breeze in False Bay.

Q. Do you think that any of the enemy's cruisers, standing in for Simon's Bay, would not

of the ships lying in Simon's Bay, whether they were not British men-of-war, and consequently have taken the advantage of the breeze they were in to make their escape, while the ships at anchor were becalmed.

A. I certainly do.

Q. Was the Gazette of Lord Nelson's action, in which the combined fleets of France and Spain were destroyed, published at the Cape of Good Hope in the course of three weeks or a month after we captured the Cape?

A. I recollect it perfectly well being published, and a salute was fired at the same time; but I cannot ascertain the time.

The COURT.—Was it before Sir Home Popham sailed?

A. Yes.

Sir HOME POPHAM.—Is it not within your knowledge, that Sir David Baird had fitted and exercised a very strong corps of flying artillery to send to any part of the coast where an enemy might appear, if there was the smallest suspicion of his meaning to land?

A. Yes; I have seen them exercised every day, if it was fine weather, for a month together, under the direction of Major Spicer.

The COURT.—Q. What were the number?

A. I do not know the number; there was a long wing of them; they reached the whole length of the street.

Q. If the enemy had been in possession of such a corps of flying artillery, would they not have most severely annoyed us in landing, in consequence

when we did land, and which is in general upon that part of the coast; provided, I mean, if the enemy had sent that artillery to be used against the disembarkation?

A. Most certainly they would.

Q. Do you remember the Fortuna brig, under neutral colours, being captured in Table Bay by one of the boats of your department, and the person who boarded her brought on shore the nephew of Schimmelpenninck, President of the Batavian government, with all his dispatches?

A. I do perfectly well, and they were secreted in the drawer of a trunk. They were opened in the castle by Colonel Vassel, and I heard them read in the government-house, before Sir David Baird, after Sir Home sailed. This mentioned to give the command of the Cape up even to any French officer of inferior rank to Governor Jansens; and I heard Sir David Baird say, he would send the dispatches by me to government.

The Prosecutor.—Q. Do you recollect when the dispatches bore date?

A. I do not.

Q. Where did they come from?

A. From Amsterdam, signed by Schimmelpenninck.

Q. Was the brig taken after Sir Home had sailed for the Rio de la Plata?

A. Yes.

Q. How long?

A. Sometime; it may be a month or two months.

Q. Was the purport of those dispatches to in-

form Governor Jansens that a French force might be expected to arrive at the Cape?

A. All that I can recollect of it was, that if a French officer of even inferior rank arrived, that he was to give up the command. I do not recollect the mention of any troops; only to give up to any inferior officer of the French, and to encourage the men to go hand in hand with the Frenchmen, whom they were to consider as brothers.

CAPTAIN KING called in, and sworn.

Sir HOME POPHAM.——Q. How long have you been an Officer in the Royal Navy?

A. Nearly twenty years, three of which as acting-lieutenant.

Q. Where have you chiefly served?

A. East Indies, Cape of Good Hope, and home service.

Q. Were you twice at the capture of the Cape of Good Hope?

A. Yes.

Q. What time were you appointed to command the Diadem?

A. The 13th of January, 1806, I think.

Q. Do you remember the circumstance of the boats of the squadron capturing the Rolla brig, by which the letters from Admiral Linois to Governor Jansens were intercepted, stating his extreme distress for provisions, and expressing a desire that he would procure some for him against his arrival, which he hoped would be by the first of March?

A. I do.---Those letters, on being found on board the Rolla, were brought to me, as Captain

of the flag-ship, and forwarded by me to Sir Home Popham.

Q. Do you remember my examining the French officer who commanded the Rolla, about the state of the Marengo's provisions; and his expressing as his strong belief, that she could not remain so long (without coming to the Cape) as the first of March, unless she could previously procure some provisions?

A. Perfectly; as he made no secret of her being destined to the Cape, knowing that we had received the letters.

Q. Do you remember hailing the Volontaire, French frigate, to strike her colours when she passed the Diadem, coming into Table Bay?

A. Yes.

Q. On a report being made to me that she had scarcely any water on board, do you recollect that I ordered a supply to be immediately sent for present expence, either from the Diomede or Raisonable?

A. I do.—The signal was immediately made; but to which ship I do not recollect.

Q. Was not the Volontaire considered as the forerunner of Admiral Willeaumez's squadron?

A. Certainly.

Q. State to the Court, whether or not, from the conversation you had with the French officers of La Volontaire, that the Cape was the first destination of Admiral Willeaumez's squadron?

A. From all the conversations I had held with the French officers, I entertained no doubt but they were destined to the Cape of Good Hope; and in a conversation with Captain Brettel, who commanded

the fate of the French squadron; stating his fears that they would arrive two at a time to water and refresh.

Q. Do you imagine, from the conversation with the French officers, that either all or part of the French squadron might be hourly expected at the Cape?

A. Certainly; as La Volontaire had been long parted from them, and had been long at sea.

Q. What did you understand to be the ultimate destination of Admiral Willeaumez's squadron, from any information you obtained by the various conversations you have stated to have had with Captain Brettel and other officers of La Volontaire?

A. I obtained information which appeared to me to be certain, that they were bound ultimately to the Brazils for refreshments, and then to the West Indies; which information I communicated to Sir Home Popham, having obtained it from an officer of La Volontaire, who I did not think much in the French interest: he was a lieutenant.

Q. Were you not aware that I was acquainted with the officer in question before the present war?

A. Yes.

Q. Do you not imagine, from the circumstances which transpired, that the officer in question was exceedingly inclined to give me every information in his power, with respect to the situation and destination of Admiral Willeaumez's squadron.

A. Yes.

Q. Did I not appear perfectly satisfied, from the information which I had obtained from this

officer, materially corroborated by collateral information of Captain Brettle and the other officers, that Admiral Willeaumez had sailed for the Brazils long before I expressed my intention of proceeding to the east coast of South America?

A. Certainly.

Q. Do you remember our receiving intelligence that Admiral Willeaumez had really arrived at St. Salvador on the coast of Brazil, on the 1st of April, and sailed from thence to the West Indies on the 20th?

A. Yes.

Q. That information was, I believe, received by us on our arrival in Rio de la Plata; and I ask you whether it did not completely confirm the information I received from the French officer, antecedent to my sailing from the Cape?

A. To the first part of that question I answer, it was to the best of my recollection, that is the information received on our arrival at the Rio de la Plata; to the latter part I answer, that it did confirm the information received from the French officers of La Volontaire.

Q. Do you remember my going on shore at the request of Sir David Baird, accompanied by the captain of the squadron, to make a regular inspection into the state and position of the batteries; and how far those already erected, and erecting, in consequence of my suggestion, would completely command what is called the anchorage of Table Bay, at all the landing places, from Three Anchor Bay to the westward of Green Point, down to Craig's Tower, in the eastern part of the bay?

A. I do, as I attended you on that occasion.

Q. Do you recollect Sir David Baird expressing

himself most perfectly satisfied with the state of defence in which the Cape was?

A. I do. I have frequently heard him expressing himself in a way that convinced me that he apprehended no danger from any attack of the enemy.

Q. Will you inform the Court whether you formed the same opinion yourself, from the observations which you made on the strength and position of the batteries?

A. As far as I could judge of a military position, I should consider the Cape in the hands of Sir David Baird, and the troops he then had, as nearly impregnable.

Q. State to the Court whether, in your opinion, all the yearly commerce, between England and India, if it could be collected in Table Bay, would not be perfectly secure from any attack of the enemy?

A. I think any hostile men of war that might attack them would be destroyed by the effect of the batteries, provided the merchant ships were properly placed.

Q. Do you remember the Gazette of Lord Nelson's victory over the Combined Fleets being published at the Cape of Good Hope?

A. Yes.

Q. Was that antecedent or subsequent to the capture of La Volontaire?

A. I cannot recollect; but I think it must have been subsequent; but I cannot be sure.

Q. Coupling the impression which you had on your mind by the detailed destruction of the Combined Fleets from the different Gazettes which came to the Cape with the intelligence, which we

received by La Volontaire, of the state of the French ships at Brest and other ports; did you imagine that the enemy could collect any force in Europe to make any attempt on the Cape of Good Hope?

A. I had no idea that they could.

Q. Is there any place, within your knowledge, that is so difficult to make an impression on, by an invading army, as the Cape of Good Hope?

A. No, generally speaking; as I do not mean to include Gibraltar, and such fortresses as those.

Q. Did you know that Sir David Baird was equipping and practising a very strong corps of flying artillery, and was raising a corps of Hottentot riflemen, before I left the Cape for Rio de la Plata?

A. Yes, he was latterly raising the latter; the former he was equipping, and constantly practising.

Q. If the enemy had been in possession of such a corps of flying artillery, and had attempted to oppose our landing by it, should we not have very materially suffered in consequence of the very heavy surf that generally rolls in upon that beach, to the northward of Craig's Tower, if the expedition had not been totally defeated?

A. If the enemy had been in possession of such a corps, and it had been well served, and done its duty, I think the landing would be impossible, as a landing at the Cape is at the best of times very difficult.

Q. Do you apprehend that any naval power is so expert in their boats, or so competent to land under circumstances of extreme difficulty, whe-

ed to them, as the officers and seamen of the British Navy?

A. No; in my answer to these questions I apply them to the limits mentioned in the preceding questions.

Q. Was it not generally understood by Sir David Baird, and the principal military officers at the Cape, that the best possible defence against an invading army was a strong corps of flying artillery?

A. Certainly.

Q. When I sailed from the Cape of Good Hope with the whole of my squadron, did you not know, and was it not generally understood, that I was going to attempt a coup de main against one of the enemy's possessions, on the Rio de la Plata?

A. Yes.

Q. Could I possibly have left behind a frigate, or even a gun-brig, without risking the success of whatever attempt I meant to make on either of those settlements?

A. No; as our force was small when combined.

Q. As you say the force was small, I wish to ask you, from all the information which we were in possession of respecting the defenceless state of the enemy's possessions on the Rio de la Plata, was there the smallest doubt expressed by any officer in the army or navy employed on that expedition, or by General Baird, of our obtaining complete possession of one of the places above alluded to, provided we sailed immediately, and acted with promptness and vigour on our arrival in the river?

A. No.

Q. Did you ever directly, or indirectly, hear Sir

David Baird offer the least argument against my taking the whole of my squadron from the Cape, of which place he was Lieutenant-Governor, or express a wish for any thing to remain beyond the Charlotte schooner, which was held ready to follow me with any dispaches that might arrive from Europe?

A. Never.

Q. Is there any thing that ever came to your knowledge which could induce you to believe or suspect that my object for undertaking the attack of Buenos Ayres was not to advance the public interest of the country, and to meet the wishes of those under whom I thought I was acting, by endeavouring to establish a permament position in the Rio de la Plata?

A. From the various conversations I have had with, and the knowledge I have of you, I am confident you had no object in view, but the annoyance of the enemy, the honour of the service, and the public interest of the commerce of Great Britain.

Q. After the capture of Buenos Ayres, did I not do every thing by precept, and example, to conciliate the minds of the inhabitants, and to prove to them that the great object of the expedition was to establish an intimate commercial intercourse between that country and Great Britain?

A. You did.

Q. Were not suggestions frequently offered to me on the propriety of immediately embarking the quicksilver and bark; and did I not refuse to do so until the fleet was completely provisioned; and by that attention to the public service did I not make every material sacrifice, and to what

A. I frequently proposed to you to embark the property, which you constantly declined until the fleet was completely victualled; and I think you thereby made a personal sacrifice of at least 20,000l.

Q. Do you remember my having sent from the Cape of Good Hope to England, to Admiral Cochrane in the West Indies, to Sir Edward Pellew in the East Indies, and to the officer commanding off the Mauritius, the intelligence I received of Admiral Willeaumez's fleet and its probable ultimate destination?

A. Yes.

Q. Do you recollect ever to have known an intance of the intelligence which I received, and which I generally communicated to you, to have been incorrect?

A. No; I do not recollect any.

Q. Was there ever a doubt entertained by any captains of the squadron, that the Rio de la Plata was completely within the Cape station?

A. Never, and I have heard them frequently converse on the subject.

Q. Was it not within your own knowledge, that Captain Rowley, who commanded the Raisonable under my orders, was at the Cape Station last war in different ships?

A. He has told me so.

The Prosecutor—Q. When did Sir Home Popham first communicate to you his intention of undertaking an expedition from the Cape against any of the possessions of the enemy in the Rio de la Plata?

A. To the best of my recollection, in the last

week in March, the very latter end of the month; we having, generally speaking, given up any expectations of Admiral Willeaumez about the 20th of March.

Q. Do you recollect the day when a Tonningen brig came into the Cape, and stated her having been boarded by a French squadron?

A. No.

Q. Were the letters which were written from time to time by Sir Home Popham to the Admiralty communicated by him to you?

A. No. I do not recollect to have read any part or parts of those letters from Sir Home Popham to the Admiralty, while we were at the Cape.

Q. I do not ask you, Sir, whether you ever read any of those letters, but I ask you whether the substance of those letters from the Cape was at any time communicated by Sir Home Popham to you?

A. I do not know to what letters you allude.

(The letter No. 13, was shewn to the witness.)

Q. Having looked at that letter, does that letter bring to your recollection the Tonningen brig having come in and stated the fact of her having been boarded by a French squadron?

A. Yes; but I did not recollect the time.

Q. Do you now recollect the time?

A. I do not but from that letter.

Q. Be so good as to state to the Court whether the conversations that you had with Sir Home Popham on the subject of his undertaking an expedition to the Rio de la Plata were or were not

prior to the date of that letter, which is the 21st of March, 1806?

A. Subsequent to it, I had no knowledge of Sir Home's intention prior to the date of that letter.

Q. Am I to understand you as speaking positively that you had no conversation with Sir Home Popham relative to his undertaking an expedition from the Cape to the Rio de la Plata, prior to the date of that letter?

A. Certainly.

Q. Upon your arrival at the Cape, and obtaining possession of it, did Sir Home Popham obtain the private signals of the enemy, and what signals were they?

A. We obtained of course the colonial signals, those, I mean, used at the signal posts.

Q. Were those signals communicated to the several captains of the squadron?

A. They were to the best of my recollection, as I had a copy of them as captain of the Diadem.

Q. Had any signal been made to La Volontaire before she struck?

A. Not that I recollect.

Q. Were any ships cruising without the Bay at the time when La Volontaire stood in?

A. The Raisonable and Narcissus were at sea, and chased La Volontaire in.

Q. Supposing La Volontaire had not struck to the Diadem, and no ship had been there, would not those ships have been able to have captured her?

Q. Is it not therefore manifestly of advantage to the Cape, to have some of his Majesty's ships on that station which could be so employed?

A. I think so.

Q. Now you have described to the Court what you consider to be the strength of the Cape as a military position, do you not think that its security would be materially added to in the event of an attempt upon it, by its having also a naval force for its protection?

A. As far as I can judge, the Cape is extremely strong, and well capable of being defended without ships; but undoubtedly the addition of ships, if the enemy were not superior in naval force, would be an assistance.

Q. When did Sir Home Popham sail from the Cape to the Rio de la Plata? what naval force did he take with him? and what did he leave behind?

A. He sailed in the middle of April, 1806, I think the 13th or 14th; took with him the Diadem, Raisonable, Diomede, Narcissus, and Encounte gun-brig; I do not know of any man of war left behind.

Q. Did you return home with Sir Home Popham?

A. I did.

COURT---Q. Did any ship or vessel arrive at the Cape, from which you obtained intelligence on the day of your sailing, or the day before, relative to Buenos Ayres?

A. Not that I recollect.

Q. When the Volontaire was taken, she had on board a number of English prisoners. Do you recollect how many?

A. To the best of my recollection they might amount to 200---between 150 and 200.

Q. Do you know what was the number of her crew?

A. I think about 300.

Q. When she arrived, was she very short of water?

A. Yes.

Q. If she had not had those 200 prisoners on board, might she not have continued much longer at sea without being very short of water?

A. Certainly; inasmuch as the proportion of those prisoners had used.

Q. You have spoken of the intelligence you obtained from an officer of the Volontaire, of the destiny of Willeaumez' squadron. I think you said he was a lieutenant. Did you learn from him by what means he was informed of their destination?

A. No; but I considered him and found him a very intelligent man, and one who appeared to me to be much in the confidence of his captain.

Q. Did he tell you that he had seen the orders of Admiral Willeaumez, or that his captain had informed him what those orders were?

A. No.

Q. You have said, that if the whole of the commerce between Great Britain and the East Indies was properly anchored in Table Bay, that it might be defended from the batteries on shore.

A. I meant, that as many ships as could be properly anchored in the bay could be protected by the guns.

Q. Would those ships be protected by the batteries before they approached near the shore in going into Table Bay?

A. Yes---the guns are heavy, and reach a long way, and are close down to the shore.

Q. Would those batteries protect the ships some leagues from the shore?

A. Certainly not.

Q. Would then the commerce of the Cape, or ships bound thither, be better protected by ships of war cruising off the Cape, than without?

A. Yes, certainly.

Q. On what day was the Volontaire taken?

A. I think it was the 4th of March.

Q. You have said that, from the information you obtained from the Volontaire, of the state of the French ships at Brest and other ports, you had no idea that the enemy could collect in Europe any force to make an attempt on the Cape.

A. Yes.

Q. Did you obtain from the Volontaire information of the naval force of Holland, of the naval force in Toulon; of the state of the ships that escaped into Cadiz; or of those that were left by the Volontaire in Brest, or the squadron in Rochefort?

A. No; but in all the conversations that I had with the French officers, which were numerous, I understood it to be their opinion, that the naval forces of the allies of France, as well as herself, were not in a state to attempt offensive operations, generally speaking; upon which I founded my opinion.

Q. Do you mean, that it was the opinion of those officers, that neither France nor her allies would be capable of sending any squadron to sea.

A. I do not know what might be their opinion of France or her allies being capable of sending out a few cruisers; but I think it was their opinion that they were not in a state to send to sea naval expeditions.

Q. I think you said that Sir David Baird considered flying artillery as being the most efficacious means of preventing a landing of troops on the coast.

A. Yes.

Q. Did you understand him to consider that they were so efficacious as to render a naval force unnecessary?

A. No: I never heard him speak of the co-operation of a naval force with his flying artillery; but I have frequently heard him express his opinion that the Cape was in perfect security, and his opinion, that the landing of troops, opposed by his army, amounted almost to an impossibility; and I conceive that, had the Dutch made a proper resistance with their flying artillery at Lotspur's Bay, it would have been very difficult, if not impossible, to have made good our landing.

Q. Is the road between the Cape and Saldanha Bay of such a description as to admit of flying artillery being rapidly transported there, if an enemy should attempt to land on that part?

A. I have never been from the Cape to Saldanha Bay by land, and do not know.

Q. You have said that you do not know that Sir David Baird had ever objected to the whole of

A. I can't say what might have passed between Sir David Baird and Sir Home Popham, when I have not been present; but I think it likely, if he had objected, I should have heard of it.

Q. You have said, that there was no doubt in the mind of any captain of the squadron, that Buenos Ayres was within the limits of the command of the officer commanding at the Cape. Have you ever seen any orders or instructions which can justify the belief of its being within such limits?

A. No: but I have ever understood, and from knowing that the cruisers of the Cape station have gone frequently to cruise at the mouth of the Rio de la Plata, and some as high as Monte Video, I could entertain no doubt on the subject.

Q. You speak of the cruisers having so done from your own knowledge.

A. No. I was not in any one of them, but have heard so from the men of the Diomede who were there.

Q. After leaving the Cape the squadron went to St. Helena: did you find there any of the East India Company's ships, or any other British ships waiting for convoy to England?

A. Not that I recollect.

Q. Do you mean to say that the Cape was nearly impregnable after the sailing of the squadron under Sir Home Popham with the troops for Buenos Ayres?

A. I mean to say, that the season of the year was such that it was next to impossible to attack it, or if they did, that would it require a most extravagant force to make a successful landing against Sir David Baird and his forces. I mean this sub-

Q. Do you know when the winter is supposed to begin at the Cape?

A. I should conceive the latter end of April.

Q. You left the Cape with the squadron about the 13th or 14th of April, was there any thing to prevent, from the season, a squadron anchoring there during that month.

A. No: if they chose to risk lying there in bad weather.

Q. Do you know what force Sir David Baird had with him after the squadron sailed?

A. I should think about 6000 men.

Sir HOME POPHAM—Q. On what day does it appear the Tonningen brig was boarded by the French fleet?

A. On the 25th of February.

Q. Is not the Cape considered a very tempestuous station to cruise off, particularly in the winter.

A. Yes.

Q. Did we not leave the Raisonable and Narcissus in False Bay a day or two preceding their coming in with La Volontaire, and were they not then returning to Table Bay?

A. Yes, they were, to the best of my recollection.

Q. When you said that the Raisonable and Narcissus would have taken the Volontaire if the Diadem had not been at an anchor in Table Bay, did you not assume that the Cape was in possession of the English?

A. Yes.

Q. From the position in which we saw the three

Volontaire could have escaped under the protection of the batteries, provided the Cape had been in possession of the enemy before the Raisonable or Narcissus could have got up with her?

A. Yes.

Q. If greater advantage can be made manifest as likely to be derived by the employment of the squadron on other service than that of remaining immediately in the vicinity of the Cape during the winter, ought not that squadron to be so employed?

A. As far as matter of opinion goes, I should reply yes.

Q. Did you hear of any capture being made by the enemy within the precincts of the Cape station, during the absence of the squadron in the Rio de la Plata?

A. I do not recollect any.

Q. Do you remember it having been told you on the night of our anchoring, after weighing on the 10th April, that there was a person in the squadron by the name of Fisher, who had been eight years a resident at Buenos Ayres, two of which he was interpreter at the Custom-house.

A. Yes.

Q. What information did he give to me?

A. He gave a good and clear account of the situation of Buenos Ayres, and its means of defence; stating that, from his knowledge of the people there, it would be very easy to obtain possession of it with a few troops?

Q. Do you recollect my immediately going on shore to Sir David Baird with that information; and that the troops which he granted for the ex-

pedition were embarked within forty-eight hours; and that we sailed as soon afterwards as the weather would permit?

A. I do.

Q. Do you remember how severely not only the ship's company, but the British troops who were on board La Volontaire, were attacked with the scurvy, by the urgent necessity they laboured under of going to so very short an allowance of water; and do you recollect that when we were removing the sick, several of them died on their passage to the shore?

A. I do recollect they were much afflicted with the scurvy; and it is probable their short allowance of water might have contributed to or caused it: but as I did not attend them to the shore, I do not know but from hearsay of several having died; they were in a bad state.

Q. Is it likely that that ship would have gone to so short an allowance of water, if the British prisoners had not been on board?

A. I should think not.

The Court.—Q. You have said, that you did not hear of any capture being made in the vicinity of the Cape, after the sailing of Sir Home Popham and his squadron?

A. Yes.

Q. Might not an hundred vessels, or might not the Cape itself, have been captured, between the time of your leaving the Cape and the arrival of the reinforcements from the Cape at the Rio de la Plata, without your hearing of it; and might not the same misfortune have happened after the sailing of that reinforcement from the Cape, without

A. Vessels might be captured and we not hear of it; but I think it highly improbable that numbers should meet with that misfortune, and no knowledge of it arrive by some means or other to the squadron.

Q. Had you frequent intercourse with the Cape?
A. Yes, several times.

Sir HOME POPHAM—Q. What was the last communication from the Cape?

A. I think it must have been as late as the latter end of November, by some reinforcements coming from the Cape, and one or two merchants' ships arriving.

The Court adjourned until the next morning at Nine o'clock.

FIFTH DAY.

WEDNESDAY MORNING, Nine o'Clock.

The Court met according to adjournment.

Sir Home Popham delivered to the Court an Address as to the production of further evidence, which was read as follows:

" In consequence of the intimation of the Court yesterday that it would be unnecessary for me to confirm the evidence of Captain King by that of Captain Edmonds, who commanded the Diomede at the Cape and the Rio de la Plata, I do not call the latter officer

" I had summoned Captain Parker to prove my disinterested conduct after the capture of Buenos Ayres, but as the court has also deemed that unnecessary, I do not call that officer.

" Mr. M'Lean was secretary, and the confidential friend and executor of Admiral Christian. He is ready to produce the various papers on the proposed attack on the Spanish Settlements in the Rio de la Plata, in the year 1798, but which the Court deeming irrevelant, I do not press upon them.

" Mr. Madden can prove my letters to Admiral Stirling, and the Governor of Monte Video, read in my defence; and also the whole of my correspondence with each, if thought necessary.

" Captain Dundas having also to speak to a precedent only, I will not trouble the Court to call upon him."

Sir Home Popham then delivered in a List of Papers, which was read.

The Court then asked Sir HOME POPHAM if he had any thing more to offer for his defence; when he read and gave in the following :—

MR. PRESIDENT,

I HERE close my defence; and I throw myself upon the wisdom and justice of this Honourable Court; my feelings and my character have suffered severely, but I trust to your judgment to relieve the one, and to rescue the other. If I

have, in the exercise of my zeal, exceeded the strictest bounds of discretion, I hope it will be evident, I have been actuated solely by a desire to promote the honour, the interests, and the glory of my country; and if, in the prosecution of those great objects, aided by my gallant followers, and fostered by the superintending hand of Providence, it has been my good fortune to be put in the possession of the two capitals of two quarters of the globe, I trust it will be found, upon a close examination of my defence, that the very head and front of my offending hath this extent---no more!

(Signed) HOME POPHAM.

The Court was then cleared, and, after some hours deliberation, was re-opened, and the following sentence read by the Judge-Advocate:

"The Court is of opinion, that the Charges have been proved against the said Captain Sir Home Popham.—That the withdrawing, without orders so to do, the whole of any naval force from the place where it is directed to be employed, and the employing it in distant operations against the enemy; more especially if the success of such operations should be likely to prevent its speedy return, may be attended with the most serious inconvenience to the public service, as the success of any plan formed by his Majesty's Ministers for operations against the enemy, in which such

ther of opinion, that the conduct of the said Captain Sir Home Popham, in the withdrawing the whole of the naval force under his command from the Cape of Good Hope, and the proceeding with it to the Rio de la Plata, was highly censurable; but in consideration of circumstances doth adjudge him to be ONLY SEVERELY REPRIMANDED; and the said Captain Sir Home Popham is hereby severely reprimanded accordingly."

W. YOUNG, President.

E. GOWER.	J. HOLLOWAY.
B. J. ROWLEY.	H. E. STANHOPE.
J. VASHON.	ISAAC COFFIN.
R. J. STRACHAN.	SAM. HOOD LINZEE.
THO'. GRAVES.	M. H. SCOTT.
JOHN IRWIN.	COURTNAY BOYLE.

M. GREETHAM, jun.
Deputy-Judge-Advocate of the Fleet.

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[*Many Papers read by Sir* HOME POPHAM, *not being put in the Minutes of the Court, are not included in this Publication.—The following chronological List is subjoined.*]

No. 1. (A.)—The Proclamation of War against Spain, dated 11th January, 1805.

No. 1. (B.)—Order of the Lords of the Admiralty, dated 31st July, 1805, for Sir Home Popham hoisting a broad pendant on quitting Madeira.

No. 2.—Order of same date for holding Courts Martial. Admiral Stirling had at his desire a Copy of this Order in the Rio de la Plata, not having had any such authority delegated to him.

No. 3.—A Letter from the Secret Committee of the East-India Company to the Governor and Council of St. Helena, dated 26th July, 1806, desiring them to afford every aid in their power in any operation in which they might be required to assist by General Sir David Baird and Sir Home Popham.

No. 4.—A Letter from Mr. Barrow, dated 2d August, 1805, which accompanied the order of that date, read on the part of the prosecution.

No. 5.—Letter from Mr. Marsden, dated 1st March, 1806, acknowledging the receipt of Sir Home Popham's dispatches, giving an account of the capture of the Cape.

No. 6.—Letter from Mr. Marsden, dated 27th March, 1806, approving of Captain Donelly's driving on shore the Napoleon, French privateer.

No. 7.—A Letter from the Governor-General and Council

No. 8 and 9.—Two Letters from Sir Home Popham to Mr. Marsden, dated from the Cape, the 7th and 20th March 1806: these letters fill up the vacuum in that part of the correspondence left by the prosecutor's evidence.

No. 10.—The Conditional Order left at the Cape for ships that might arrive there in the absence of the Commodore.

No. 11.—The principal Letter to Mr. Marsden of the 30th April, 1806, containing the detailed account of the intended proceedings of the squadron. This letter inclosed a copy of the memoir prepared with General Miranda, which it is submitted should not be read, but inspected by the Court.

No. 12.—A Letter from General Baird, dated 27th May, 1806, to the Right Hon. William Windham, confirming the general tranquillity of India.

No. 13.—Order of the Lords Commissioners of the Admiralty, addressed to Commodore Sir Home Popham, dated 28th July 1806, requiring him to return forthwith to England, and directing him to furnish Admiral Stirling with every information in his power relative to the services in which the Commodore had been employed, as well at the Cape as on the Coast of South America.

No. 14.—A Letter from Mr. Marsden, acknowledging the receipt of Sir Home Popham's letter from the Cape of the 9th April, announcing the intended proceeding of the squadron to the Rio de la Plata.

No. 15.—A Letter from Lord Barham, in answer to one from Sir Home Popham, which communicated to his Lordship the intended expedition against the Spanish settlements on the East Coast of South America.

No. 16.—The Gazette Letter from Sir Home Popham to Mr. Marsden, announcing the capture of Buenos Ayres.

No 17.—A Letter from Mr. Marsden, dated the 25th of September, 1806, addressed to Commodore Sir Home Pophan, by the Ardent, expressing their Lordships' entire approbation of the judicious, able, and spirited conduct manifested by the commodore, and the officers, seamen, and marines, under his orders, on the surrender of the city of Buenos Ayres to his Majesty's Arms.

No. 18.—A Letter from Mr. Marsden, dated the 23d of September 1806; also by the Ardent, inclosing the copy of the Proclamation issued by his Majesty on the 17th of September, regulating the trade of Buenos Ayres and its dependencies, together with the Gazette in which it was published.

No. 19.—Another Letter from Mr. Marsden, dated the 25th of September, 1806; also by the Ardent, inclosing a copy of the instructions given to General Achmuty, when sent out for the reinforcement of General Beresford.

No 20.—The actual Letter written by Sir Home Popham to Mr. Marsden, on the re-capture of Buenos Ayres, and the capture of Maldonado.

No. 21.—The mutilated publication of that letter in the Gazette.

No. 22—A Letter to the Governor of Monte Video, dated the 19th of September, 1806, on the non-observance of the articles of capitulation, on the surrender of General Beresford and his army.

No. 23.—A Letter from Sir Home Popham to Admiral Stirling, dated 3d December, 1806, offering his services to the Admiral in any way he might chuse to employ him in the Rio de la Plata.

No. 24.—Letter from Mr. Marsden, dated 28th February, 1807, admitting Sir Home Popham's Letter of the 30th April, 1806, to have been received at the Admiralty the 24th June following.

No. 25.—Note from Lord Lauderdale to Mons. Talleyrand, dated Paris, September 19th, 1806.

No. 26.—Letter from the Secretary of the Admiralty to the Deputy Judge-Advocate, dated the 6th March, 1807, inclosing one of the same date from Sir Francis Vincent, written by order of Lord Howick, his Majesty's Secretary of State for Foreign Affairs; with a Copy of a Letter from Lord Grenville to Sir Home Popham, dated the 19th November, 1797.

THE END.

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APP

AN ACCOUNT of the Total Amount of the Company's DEBTS and ASS
April 1803, and the latter from March 1794 t

DEBTS.

	INDIA.	CHINA: Balance against		HOME.	TOTA
Abroad ...1793	£. 8,074,865	.....	At Home 1794	£. 7,006,500	£. 15,081
Do. ... 1794	7,367,190	.....	Do. ... 1795	6,946,323	14,313
Do. ... 1795	6,848,403	.....	Do. ... 1796	7,474,700	14,323
Do. ... 1796	7,203,326	.....	Do. ... 1797	7,916,459	15,119
Do. ... 1797	9,294,539	718,945	Do. ... 1798	7,284,694	17,298
Do. ... 1798	11,032,645	1,073,607	Do. ... 1799	7,103,762	19,216
Do. ... 1799	12,995,526	220,022	Do. ... 1800	5830,222	19,045
Do. ... 1800	14,240,202	.....	Do. ... 1801	5,393,989	19 6
Do. ... 1801	16,912,969	.....	Do. ... 1802	4,822,683	21,735
Do. ... 1802	18,654,381	.....	Do. ... 1803	4,773,886	23,428
Do. ... 1803	19,869,223	260,900	Do. ... 1804	4,788,865	24,918

Mem.—The Debts and Assets in India are stated, exclusive of the Securities i
stated conformably to the Accounts presented to Parliament in eac
having been received when the Statements were laid before Parlia

(A) This differs from the Account formerly presented, it having been

East-India House,
30th July, 1804.

(Errors excepted)

APPENDIX, No. IV.

AN ACCOUNT, shewing the Operation of a SINKING FUND, in the REDUCTION of the INDIAN DEBT, at Two Millions annually, *viz.* One Million from the Surplus Revenue, and One Million from the Saving on Interest, and from a Loan, &c.

	Rate of Interest with Probable Reduction.	Principal reduced two Millions in each Year.	Annual Interest payable according to foregoing Supposition.	Annual Saving upon Interest reduced, and Capital paid off.	Amount to be raised, with the Savings in the preceding Column, to complete the additional Million for Sinking Fund.
1803-4	£.12,600,000 at 8 per Cent. 3,400,000 at 10 per Cent.	£.16,000,000	£.1,348,000	.....	£.1,000,000
1804-5	10,600,000 at 7½ per Cent. 3,400,000 at 10 per Cent.	14,000,000	1,135,000	213,000	787,000
1805-6	8,600,000 at 7 per Cent. 3,400,000 at 10 per Cent.	12,000,000	942,000	406,000	594,000
1806-7	6,600,000 at 7 per Cent. 3,400,000 at 10 per Cent.	10,000,000	802,000	546,000	454,000
1807-8	4,600,000 at 6½ per Cent. 3,400,000 at 10 per Cent.	8,000,000	639,000	709,000	291,000
1808-9	2,600,000 at 6½ per Cent. 3,400,000 at 10 per Cent.	6,000,000	509,000	839,000	161,000
				2,713,000	3,287,000
1809-10	At 6 per Cent.	4,000,000	240,000	1,108,000	

In the Years 1808-9 and 1809-10, the ten and eight per Cent. Decennial Loans, amounting together to about 4,014,000*l.*, will become payable, either in India or Europe, at the option of the Holders. It is probable, from the favourable rate of Exchange at which the Holders are entitled to receive their payment in Europe, that the whole, or the greater part of these Loans, will be transferred. In whatever proportion, by such Transfer, the Indian Debt may be reduced below four Millions, the Sum at which it is proposed it should remain, a corresponding Sum must be raised by Loan in India, which will preserve the Debt abroad at the due Amount, and will enable the Company, by retaining in Europe the Funds which must otherwise be remitted to India, either in Bullion or by Bills, so to regulate the State of their Home Treasury, as to be prepared to meet the increased demands upon it.

The Amount of the Principal of the Debt to be liquidated by above operation is..... £.12,000,000

The means are:		
Surplus Revenue.....	£.6,000,000	
Annual Saving of Interest.....	2,713,000	
Amount raised by Loan at Home, &c.	3,287,000	
		£.12,000,000

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ESTIMATE of PROFIT and LOSS on the COMPANY's SALES in ENGLAND, and other PROFITS; for Ten Years ending March, 1804, with other PAYMENTS in ENGLAND deducted therefrom; distinguishing each Year; and distinguishing, as far as may be, such Charges as are of a Political from those that are of a Commercial Nature; and also, distinguishing the India from the China Account.

	INDIA.		CHINA.		TOTAL INDIA AND CHINA.		Charges and Profit on Private Trade.	Interest on Annuities.	Profit on Exports.	TOTAL PROFITS.
	Cost and Charges.	Sale Amount.	Cost and Charges.	Sale Amount.	Cost and Charges.	Sale Amount.				
	£.	£.	£.	£.	£.	£.	£.	£.	£.	£.
....	2,292,031	2,611,522	2,231,982	2,861,422	4,524,013	5,472,944	62,458	36,227	116,857	1,164,473
....	3,350,779	3,543,236	2,125,155	2,972,664	5,475,934	6,515,900	148,417	36,227	98,384	1,322,994
....	3,303,877	3,395,561	2,035,732	2,668,346	5,339,609	6,063,910	138,957	36,227	25,717	925,202
....	1,957,512	2,097,468	2,137,925	2,577,890	4,095,437	4,675,358	115,808	36,227	49,530	781,486
....	4,209,810	4,663,390	2,772,373	3,652,283	6,982,183	8,315,673	137,394	36,227	110,442	1,617,553
....	2,948,176	3,564,694	3,060,046	3,794,982	6,008,222	7,359,676	202,969	36,227	129,528	1,720,178
....	3,280,043	3,978,800	2,919,250	3,616,381	6,199,293	7,595,181	133,429	36,227	55,861	1,621,405
....	2,179,991	3,086,943	2,822,722	3,539,404	5,002,713	6,626,347	193,563	36,227	40,602	1,894,026
....	1,846,357	2,289,274	2,909,118	3,753,252	4,755,475	6,042,526	172,474	36,227	38,673	1,534,425
....	1,943,920	2,236,396	2,950,009	3,629,677	4,893,929	5,866,073	176,587	36,212	12,892	1,197,835
£.	27,312,496	31,467,287	25,964,312	33,066,301	53,276,808	64,533,588	1,482,056	362,255	678,486	13,779,577

Other PAYMENTS in ENGLAND to be deducted from PROFITS.

	Dividends on Stock and Interest on Bonds.	Surplus Charges beyond 5*l.* per Cent. on the Sale Amount of Goods, classed with Charges on Merchandize, deducting Buildings and other Articles, for which a Value remains.		Expences of Settlements abroad.	Freight Outward; Remuneration to Commanders of worn-out Ships, and Loss upon the Law Tonnage.	Military Payments.	Insurance, calculated at a Rate per Cent. according to the Actual Loss suffered by the Company.	Total Payments.	Surplus.	Deficiency.
		Political.	Commercial.							
	£.	£.	£.	£.	£.	£.	£.	£.	£.	£.
...	702,725	139,800	18,134	62,687	94,[illegible]	.....	48,062	1,066,082	98,391	—
...	722,172	167,600	70,691	57,253	91,949	.....	53,624	1,163,289	159,705	—
...	675,278	276,800	84,152	82,574	156,452	28,236	51,306	1,354,798	.....	429,596
...	679,025	145,300	93,784	74,760	79,113	25,225	61,916	1,159,123	.....	377,637
...	710,593	131,200	4,965	80,205	161,895	37,125	71,153	1,197,136	420,417	—
...	713,158	190,200	82,797	60,046	119,255	35,855	58,665	1,259,976	460,202	—
...	713,489	171,400	104,394	77,540	119,472	46,622	57,743	1,290,660	330,745	—
...	704,404	226,800	105,416	77,980	147,077	49,216	60,492	1,371,385	522,641	—
...	705,310	259,500	130,567	78,428	147,301	60,163	67,413	1,448,682	85,743	—
...	707,512	200,500	203,062	79,880	108,[illegible]	96,667	90,598	1,486,665	.....	288,830
£.	7,033,666	1,909,100	897,962	731,353	1,225,634	379,109	620,972	12,797,796	2,077,844	1,096,063
									£.981,781	

TOTAL PROFITS.....	£.13,779,577
TOTAL PAYMENTS	12,797,796
TOTAL SURPLUS in Ten Years.....	£.981,781

East India House, 20th July, 1804.

(Errors excepted)

CHAS. CARTWRIGHT, Accountant General.

Memorandum:

There are Claims upon the Company from the Office of His Majesty's Paymaster General, for Charges relative to the King's Regiments serving in India, amounting, on the 24th December last, to £1,385,247. 14*s.*—Of this Sum £100,000 has been paid, and the Company's Claims on Government, for the Expences of the Army sent from India to Egypt, not included in the Assests in Account No. III, will considerably more than exceed this Amount.